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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]76

THE BANK OF JASPER, PETITIONER,

vs.

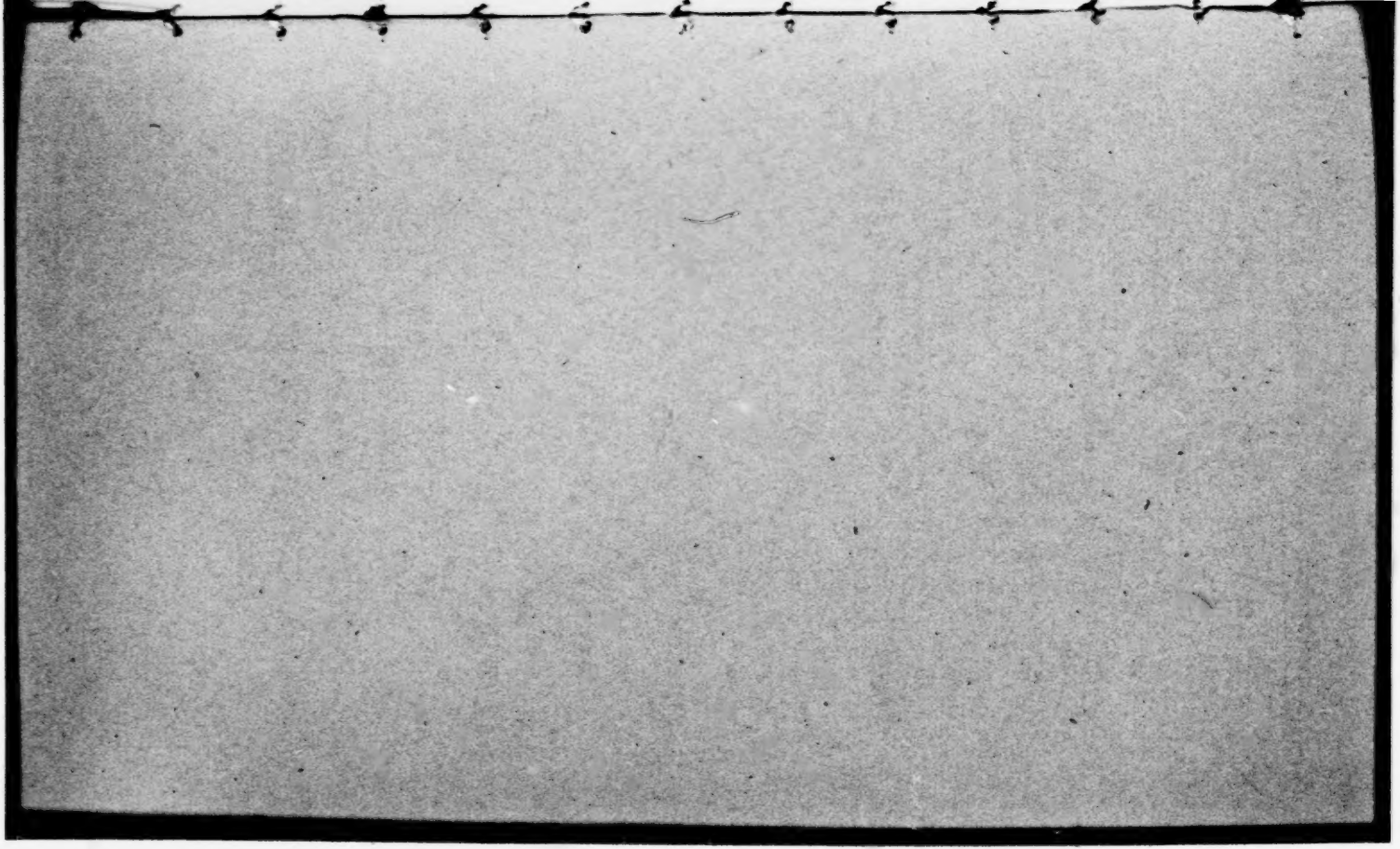
FIRST NATIONAL BANK OF ROME, GEORGIA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED JUNE 7, 1920.

CERTIORARI AND RETURN FILED OCTOBER 22, 1920.

(27,740)



(27,740)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

No. 383.

THE BANK OF JASPER, PETITIONER,

vs.

FIRST NATIONAL BANK OF ROME, GEORGIA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit Begun on the Third Monday in November, A. D. 1919, at New Orleans, Louisiana, Before the Honorable Richard W. Walker, Circuit Judge, and the Honorable William I. Grubb and the Honorable George W. Jack, District Judges.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff in Error,

versus

THE BANK OF JASPER, Defendant in Error.

Be it remembered, That heretofore, to wit, on the 25th day of August, A. D. 1919, a transcript of the record in the above styled cause, pursuant to a writ of error to the District Court of the United States for the Southern District of Florida, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3431, as follows, to wit:

b TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3431.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff in Error,

versus

THE BANK OF JASPER, Defendant in Error.

Error to the District Court of the United States for the Southern District of Florida.

[Original Record Filed August 25, 1919.]

U. S. Circuit Court of Appeals. Filed Nov. 15, 1919. Frank H. Mortimer, Clerk.

Deposit of that date, the same being its Certificate of Deposit No. 316, for value received, promised the American Bank and Trust Company, Trustee, of Rome, Georgia, to pay it, or its order, the sum of $441.00, on or after, to-wit, November 22nd, 1912, with interest at the rate of 4 per cent. per annum, compounded quarterly; and the said American Bank and Trust Company, Trustee, thereafterwards indorsed the said certificate of deposit and transferred the same to the First National Bank of Rome, Georgia, which said indorsement appears thereon and which is shown by the copy of the said certificate of deposit attached to and hereby made a part of this declaration, the said certificate being found in the bill of particulars attached hereto, whereby the said Bank of Jasper became liable and in consideration thereof, promised the plaintiff to pay it the contents of the said certificate of deposit, according to the tenor thereof; and the plaintiffs avers that the said 22nd day of November, 1912, has long since passed, yet, though since that time requested, said request being accompanied with a return of the said Certificate of Deposit properly indorsed, the said Bank of Jasper has never paid the said amount, or any part thereof, but refuses so to do.

And for a third count, plaintiff says that the said Bank of Jasper, on, to-wit, the 23rd day of November, 1911, at, to-wit, the city of Jasper, Florida, by its negotiable certificate of deposit of that date, the same being its certificate of deposit No. 317, for value received, promised the American Bank and Trust Company, Trustee, of Rome, Georgia, to pay it or order the sum of $1,470.00, on or after November 23rd, 1912, with interest at the rate of 4 per cent. per annum, compounded quarterly, and the said American Trust Company, Trustee, thereafterwards indorsed the said certificate of deposit and transferred the same to the First National Bank of Rome, Georgia; which said indorsement appears thereon and which is shown by the copy of the said certificate of deposit attached to and hereby made a part of this declaration, the said certificate being found in the bill of particulars attached hereto, whereby the said Bank of Jasper became liable and in consideration thereof, promised the plaintiff to pay it the contents of the said Certificate of Deposit according to the tenor thereof; and the plaintiff avers that the said 23rd day of November, 1912, has long since passed, yet, though since that time requested, said request being accompanied with a return of the said certificate of deposit properly indorsed, the said Bank of Jasper hath never paid the said amount, nor any part thereof, but refuses so to do.

And for a fourth count, plaintiff says that the said Bank of Jasper, on, to-wit, November 23rd, 1911, at, to-wit, the city of Jasper, Florida, by its negotiable certificate of deposit for that date, the same being its certificate of deposit No. 318, for value received, promised the American Bank and Trust Company, Trustee, of Rome, Georgia, to pay it or its order, the sum of $735.00, on or after, to-wit, November 23rd, 1912, with interest at the rate of 4 per cent. per annum, compounded quarterly; and the said American Bank and Trust Company, Trustee, thereafterwards indorsed the

said certificate of deposit and transferred the same to the First National Bank of Rome, Georgia, which said indorsement appears thereon, and which is shown by the copy of said certificate of deposit attached to and hereby made a part of this declaration, the said certificate being found in the bill of particulars attached hereto, and whereby the said Bank of Jasper became liable and in consideration thereof, promised the plaintiff to pay it the contents of the said certificate of deposit according — the tenor thereof; and the plaintiff avers that the said 23rd day of November, 1912, has long since passed, yet, though since that time requested, said request being accompanied with a return of the said certificate of deposit properly indorsed, the said Bank of Jasper hath never paid the said amount, nor any part thereof, but refuses so to do.

And for a fifth count, plaintiff says that the said Bank of Jasper, on, to-wit, November 25th, 1911, at to-wit, the city of Jasper, Florida, by its negotiable certificate of deposit of that date, the same being its certificate of deposit No. 319, for value received, promised the American Bank and Trust Company, Trustee, of Rome, Georgia, to pay it or its order the sum of $1,588.20, on or after November 25th, 1912, with interest at the rate of 4 per cent. per annum, compounded quarterly; and the said American Bank and Trust Company, Trustee, thereafterwards indorsed the said certificate of deposit and transferred the same to the First National Bank of Rome, Georgia, which said indorsement appears thereon, and which is shown by the copy of the said certificate of deposit attached to and hereby made a part of this declaration, the said certificate being found in the bill of particulars attached hereto, whereby the said Bank of Jasper became liable and in consideration thereof, promised the plaintiff to pay it the contents of the said certificate of deposit according to the tenor thereof; and the plaintiff avers that the said 25th day of November, 1912, has long since passed, yet, though since that time requested, said request being accompanied with a return of the said certificate of deposit properly indorsed, the said Bank of Jasper hath never paid the said amount, nor any part thereof, but refuses so to do.

And for a sixth count, plaintiff says that the defendant, on, towit, the 21st day of November, 1911, at, towit, the city of Jasper aforesaid, received the sum of $2,940.00 for the use of the plaintiff, and in consideration thereof promised to pay the plaintiff, on or after to-wit, November 21st, 1912, the said sum of money so due as aforesaid, with interest at the rate of 4 per cent. per annum, compounded quarterly; and the plaintiff avers that the said 21st day of November, 1912, has long since passed, yet, though since that time requested, the defendant has never paid the said sum, nor any part thereof, but refuses so to do.

And for a seventh count, the plaintiff says that the defendant, on, to-wit, the 22nd day of November, 1911, at, to-wit, the city of Jasper aforesaid, received the sum of $141.00 for the use of the plaintiff, and in consideration thereof, promised to pay the plaintiff on or after the 22nd day of November, 1912, the said sum of money so due as

aforesaid, with interest at the rate of 4 per cent. per annum, compounded quarterly; and the plaintiff avers that the said 22nd day of November, 1912, has long since passed yet, though since that time requested, the defendant hath never paid the said sum, nor any part thereof, but refuses so to do.

And for an eighth count, plaintiff says that the defendant, on, to-wit, the 23rd day of November, 1911, at, to-wit, the city of Jasper aforesaid, received the sum of $1,470.00 for the use of the plaintiff, and in consideration thereof, promised to pay the plaintiff on or after, to-wit, November 23rd, 1912, the said sum of money due as aforesaid, with interest at the rate of 4 per cent. per annum, compounded quarterly; and the plaintiff avers that the said 23rd day of November, 1912, has long since passed, yet, though since that time requested, the defendant has never paid the said sum, nor any part thereof, but refuses so to do.

And for a ninth count, plaintiff says that the defendant, on, to-wit, the 23rd day of November, 1911, at, to-wit, the said city of Jasper, Florida, received the sum of $735.00 for the use of the plaintiff and in consideration thereof, promised to pay the plaintiff on or after November the 23rd, 1912, the said sum of money so
8 due as aforesaid, with interest at the rate of 4 per cent. per annum, compounded quarterly; and the plaintiff avers that the said 23rd day of November, 1912, has long since passed, yet, though since that time requested, the defendant has never paid the said sum nor any part thereof, but refuses so to do.

And for a tenth count, plaintiff says that the defendant, on, to-wit, the 25th day of November, 1911, at, to-wit, the city of Jasper aforesaid, received the sum of $1,558.20 for the use of the plaintiff, and in consideration thereof promised to pay the plaintiff on or after, to-wit, November 25th, 1912, the said sum of money so due as aforesaid, with interest at the rate of 4 per cent. per annum, compounded quarterly; and the plaintiff avers that the said 25th day of November, 1912, has long since passed, yet, though since that time requested, the defendant hath never paid the said sum nor any part thereof, but refuses so to do.

Wherefore, the plaintiff brings this, its suit against the defendant and claims damages in the sum of $12,000.00.

KAY & DOGGETT,
Attorneys for Plaintiff.

9 *Bill of Particulars.*

No. 315.

Certificate of Deposit.

The Bank of Jasper. $2,940.00.
3,059.38.

Jasper, Fla., Nov. 21st, 1911.

American Bank & Trust Co., Trustee, Rome, Ga., has deposited in this Bank Twenty-nine Hundred Forty & No/100 Dollars payable

to the order of itself with interest at rate of 4% compounded quarterly on the return of this Certificate properly indorsed. Not due until November 21st, 1912.

W. S. MURROW,
Cashier.

Not subject to check.

Copy.

Certificate of Deposit.

No. 316.

The Bank of Jasper.

$441.00
458.00.

Jasper, Fla., Nov. 22, 1911.

American Bank & Trust Co., Trustee, Rome, Ga., has deposited in this Bank Four Hundred Forty-one and No/100 Dollars payable to the order of itself with interest at rate of 4% per annum compounded quarterly on the return of this Certificate properly indorsed On or after November 22nd, 1912.

W. S. MURROW,
Cashier.

Not subject to check.

Copy.

10 Certificate of Deposit.

No. 317.

The Bank of Jasper.

$1,470.00.
1,529.69.

Jasper, Fla., Nov. 23rd, 1911.

American Bank & Trust Co., Trustee, Rome, Ga., has deposited in this Bank Fourteen Hundred and Seventy and No/100 Dollars payable to the order of itself with interest at 4% per annum compounded quarterly on the return of this Certificate properly indorsed on or after November 23rd, 1912.

Not subject to check.

W. S. MURROW,
Cashier.

Copy.

Certificate of Deposit.

No. 318.

The Bank of Jasper.

$735.00.
764.84.

Jasper, Fla., Nov. 23, 1911.

American Bank & Trust Co., Trustee, Rome, Ga., has deposited in this Bank Seven Hundred Thirty-five and No/100 Dollars payable to the order of itself with interest at the rate of 4% per annum compounded quarterly on the return of the Certificate properly indorsed On or after Nov. 23rd, 1912.

W. S. MURROW,
Cashier.

Not subject to check.

Copy.

11 Certificate of Deposit.

No. 319.

The Bank of Jasper.

$1,558.20.
1,621.46.

Jasper, Fla., Nov. 25th, 1911.

American Bank & Trust Co., Trustee, of Rome, Ga., has deposited in this Bank Fifteen Hundred Fifty-eight and 20/100 Dollars payable to the order of itself with interest at the rate of 4% per annum compounded quarterly on the return of this Certificate properly indorsed, on or after Nov. 25th, 1912.

Not subject to check.

W. S. MURROW,
Cashier.

Copy.

Indorsed: Declaration. Filed March 8, 1913. E. O. Locke, Clerk.

Stipulation of Counsel.

In the District Court of the United States for the Southern District of the State of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff.

v.

THE BANK OF JASPER, FLORIDA, Defendant.

It is hereby stipulated and agreed between counsel representing the plaintiff and counsel representing the defendant in the above entitled

cause that the time for further pleading by the defendant may be and the same is hereby extended until the Rule Day in August, 1914, and an order may be entered accordingly.

Agreed to this 20 day of July, 1914.

KAY & DOGGETT,
Attorneys for Plaintiff.
CARTER McCOLLUM,
Attorneys for Defendant.

12 Upon consideration of the foregoing stipulation it is ordered that the time for further pleading by the defendant in the above entitled cause be and the same is hereby extended until the Rule Day in August, 1914.

Done and ordered this 20th day of July, 1914.

R. M. CALL,
Judge.

Filed Jul. 20, 1914.
E. D. DODGE,
Clerk.

Additional Pleas of Defendant.

In the District Court of the United States for the Southern District of the State of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff,

v.

THE BANK OF JASPER, FLORIDA, Defendant.

Comes now the defendant by its undersigned attorneys and for an additional plea to the First Count of plaintiff's declaration says:

That the said plaintiff ought not to have and maintain its action in this behalf because prior to the commencement of this suit and on, to-wit, the 3rd day of January, 1913, one C. L. Adams instituted his suit on the Chancery side of the Circuit Court of Hamilton County, Florida, against this Defendant and the said plaintiff herein and against the Rome Insurance Company and American Bank & Trust Company and this defendant avers that said Circuit Court of Hamilton County, Florida, was and is a Court of general jurisdiction; that in and by said suit so instituted as aforesaid, it was claimed and alleged by the said complainant therein, among other things, that the certificate of deposit, in said count sued upon, was issued by this defendant to cover and include the proceeds of a certain note
13 executed by the said complainant, C. L. Adams, and that said note was made payable to the order of the said complainant, and was procured by the false and fraudulent representations of the said Rome Insurance Company, and its Trustee, the said American Bank & Trust Company; that the proceeds of said note so procured as aforesaid were deposited with this defendant in its banking house

in Jasper, Hamilton County, Florida, and the certificate of deposit in said count sued upon, represents and covers the proceeds of said note so procured as aforesaid, and that such deposit has at all times since the date of the said certificate of deposit been and remained in the said banking house of this defendant at Jasper aforesaid, and in and by the said suit the said complainant, C. L. Adams, claimed and alleged that the said deposit was created by the fraud and deceit of said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and that said certificate of deposit, in this count sued upon, was likewise procured by the fraud of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and the said complainant in the said Chancery suit sought to have the said fund, the proceeds of said certificate of deposit, in the defendant's banking house at Jasper aforesaid, impressed with a trust in favor of said complainant and therein and thereby prayed, among other things, that the said certificate of deposit be decreed null and of no effect and that the said funds be decreed to belong to the said complainant in said Chancery suit; that thereafter, to-wit, on the 14th day of July, 1914, and since the filing of the last pleadings herein, the Judge of the said Circuit Court of Hamilton County, Florida, duly rendered a final decree in said Chancery suit and therein and thereby adjudged and decreed among other things, the proceeds of said complainant's note, to-wit, the sum of Two Thousand, Nine Hundred and Forty Dollars, covered by and included in the said certificate of deposit, in this count sued upon, and held
14 by the plaintiff herein, to be impressed with a trust in favor of the complainant and were adjudged to belong to him, and the plaintiff herein was decreed to have no right, title, interest, claim or demand of, in and to the said proceeds or any part thereof, and this defendant was therein and thereby required and directed to pay the said proceeds over to the said complainant in said Chancery suit, and was enjoined from paying the said proceeds to the plaintiff herein or to anyone for it; and in and by said final decree the certificate of deposit, in this count sued upon, dated the 21st day of November, 1911, in so far as it covered and included the proceeds derived from said note executed by the complainant in said Chancery suit, was decreed to be void and of no effect; that said final decree was duly and regularly entered and recorded in Circuit Court Minute Docket No. H, page 277, of the Public Records of Hamilton County, Florida, on the 14th day of July, 1914; all of which will more fully appear reference being had to a certified copy of said final decree attached to and made a part of this plea as fully as if set out in hec verba, and marked exhibit "A."

And the defendant for an additional plea to the second count of plaintiff's declaration, says:

That the said plaintiff ought not to have and maintain its action in this behalf because prior to the commencement of this suit and on, to-wit, the 3rd day of January, 1913, one A. L. Wise instituted his suit on the Chancery side of the Circuit Court of Hamilton County, Florida, against this defendant and the said plaintiff herein, and against the Rome Insurance Company and American Bank & Trust

Company, and this defendant avers that said Circuit Court of Hamilton County, Florida, was and is a Court of general jurisdiction; that in and by said suit so instituted as aforesaid, it was claimed and alleged by the said complainant therein, among other things, that the certificate of deposit, in said count, sued upon, was issued
15 by this defendant to cover and include the proceeds of a certain note executed by the said complainant A. L. Wise, and that said note was made payable to the order of the said complainant, and was procured by the false and fraudulent representations of the said Rome Insurance Company, and its Trustee, the said American Bank & Trust Company; that the proceeds of said note so procured as aforesaid, were deposited with this defendant in its banking house in Jasper, Hamilton County, Florida, and the certificate of deposit, in said count sued upon, represents and covers the proceeds of said note so procured as aforesaid, and that such deposit has at all times since the date of the said certificate of deposit been and remained in the said banking house of this defendant at Jasper, aforesaid, and in and by the said suit the said complainant A. L. Wise claimed and alleged that the said deposit was created by the fraud and deceit of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and that said certificate of deposit, in this count sued upon, was likewise procured by the fraud of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and the said complainant in the said Chancery suit sought to have the said fund, the proceeds of said certificate of deposit, in the defendant's banking house at Jasper aforesaid, impressed with a trust in favor of said complainant and therein and thereby prayed, among other things, that the said certificate of deposit be decreed null and of no effect and that the said funds be decreed to belong to the said complainant in said Chancery suit; that thereafter, to-wit, on the 14th day of July, 1914, and since the filing of the last pleadings herein, the Judge of the said Circuit Court of Hamilton County, Florida, duly rendered a final decree in said Chancery suit and therein and thereby adjudged and decreed, among other things the proceeds of said complainant's note, to-wit, the sum of Four Hundred and Forty-one Dollars, covered by and included in the said certificate of deposit, in this count sued upon, and
16 held by the plaintiff herein, to be impressed with a trust in favor of the said complainant and were adjudged to belong to him, and the plaintiff herein was decreed to have no right, title, interest, claim or demand of, in and to the said proceeds or any part thereof, and this defendant was therein and thereby required and directed to pay the said proceeds over to the said complainant in said Chancery suit, and was enjoined from paying the said proceeds to the plaintiff or to anyone for it; and in and by said final decree the certificate of deposit, in this count sued upon, dated the 22nd day of November, 1911, in so far as it covered and included the proceeds derived from said note executed by the complainant in said Chancery suit, was decreed to be void and of no effect; that the said final decree was duly and regularly entered and recorded in Circuit Court Minute Docket No. 11, page 271 of the Public Records of Hamilton County,

Florida, on the 14th day of July, 1914; all of which will more fully appear reference being had to a certified copy of said final decree attached to and made a part of this plea as if set out in hec verba and marked exhibit "B."

And the defendant for an additional plea to the third count of plaintiff's declaration, says:

That the said plaintiff ought not to have and maintain its action in this behalf because prior to the commencement of this suit and on, to-wit, the 3rd day of January, 1913, one J. B. Wetherington instituted his suit on the Chancery side of the Circuit Court of Hamilton County, Florida, against this Defendant and the said plaintiff herein and against the Rome Insurance Company and American Bank & Trust Company and this defendant avers that said Circuit Court of Hamilton County, Florida, was and is a Court of general jurisdiction; that in and by said suit so instituted as aforesaid, it was claimed and alleged by the said complainant therein, among other
17 things, that the certificate of deposit, in said count sued upon, was issued by this defendant to cover and include the proceeds of a certain note executed by the said complainant, J. B. Wetherington, and that said note was made payable to the order of the said complainant, and was procured by the false and fraudulent representations of the said Rome Insurance Company, and its Trustee, the said American Bank & Trust Company; that the proceeds of said note so procured as aforesaid were deposited with this defendant in its banking house in Jasper, Hamilton County, Florida, and the certificate of deposit in said count sued upon, represents and covers the proceeds of said note so procured as aforesaid, and that such deposit has at all times since the date of the said certificate of deposit been and remained in the said banking house of this defendant at Jasper aforesaid, and in and by the said suit the said complainant, J. B. Wetherington claimed and alleged that the said deposit was created by the fraud and deceit of said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and that said certificate of deposit, in this count sued upon, was likewise procured by the fraud of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and the said complainant in the said Chancery suit sought to have the said fund, the proceeds of said certificate of deposit, in the defendant's banking house at Jasper aforesaid, impressed with a trust in favor of said complainant and therein and thereby prayed, among other things, that the said certificate of deposit be decreed null and of no effect and that the said funds be decreed to belong to the said complainant in said Chancery suit; that thereafter, to-wit, on the 14th day of July, 1914, and since the filing of the last pleadings herein, the Judge of the said Circuit Court of Hamilton County, Florida, duly rendered a final decree in said Chancery suit and therein and thereby adjudged and decreed, among other things, the proceeds of said complainant's note,
18 to-wit, the sum of One Thousand Four Hundred and Seventy Dollars, covered by and included in the said certificate of deposit, in this count sued upon, and held by the plaintiff herein, to be impressed with a trust in favor of the complainant and were adjudged

to belong to him, and the plaintiff herein was decreed to have no right, title, interest, claim or demand of, in and to the said proceeds or any part thereof, and this defendant was therein and thereby required and directed to pay the said proceeds over to the said complainant in said Chancery suit, and was enjoined from paying the said proceeds to the plaintiff herein or to anyone for it; and in and by said final decree the certificate of deposit in this count sued upon, dated the 23rd day of November, 1911, in so far as it covered and included the proceeds derived from said note executed by the complainant in said Chancery suit, was decreed to be void and of no effect; that said final decree was duly and regularly entered and recorded in Circuit Court Minute Docket No. 11, page 283 of the Public Records of Hamilton County, Florida, on the 14th day of July, 1914; all of which will more fully appear reference being had to a certified copy of said final decree attached to and made a part of this plea as if set out in hec verba, and marked exhibit "C."

And the defendant for an additional plea to the fourth count of plaintiff's declaration, says:

That the said plaintiff ought not to have and maintain its action in this behalf because prior to the commencement of this suit and on, to-wit, the 3rd day of January, 1913, one W. M. O'Cain instituted his suit on the Chancery side of the Circuit Court of Hamilton County, Florida, against this defendant and the said plaintiff herein, and against the Rome Insurance Company and American Bank & Trust Company, and this defendant avers that said Circuit Court of Hamilton County, Florida, was and is a Court of general jurisdiction; that in and by said suit so instituted as aforesaid, it was
19 claimed and alleged by the said complainant therein, among other things, that the certificate of deposit, in said count, sued upon, was issued by this defendant to cover and include the proceeds of a certain note executed by the said complainant W. M. O'Cain, and that said note was made payable to the order of the said complainant, and was procured by the false and fraudulent representations of the said Rome Insurance Company, and its Trustee, the said American Bank & Trust Company; that the proceeds of said note so procured as aforesaid, were deposited with this defendant in its banking house in Jasper, Hamilton County, Florida, and the certificate of deposit, in said count sued upon, represents and covers the proceeds of said note so procured as aforesaid, and that such deposit has at all times since the date of the said certificate of deposit been and remained in the said banking house of this defendant at Jasper, aforesaid, and in and by the said suit the said complainant W. M. O'Cain claimed and alleged that the said deposit was created by the fraud and deceit of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and that said certificate of deposit, in this count sued upon, was likewise procured by the fraud of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and the said complainant in the said Chancery suit sought to have the said fund, the proceeds of said certificate of deposit, in the defendant's banking house at Jasper aforesaid, impressed with a trust in favor of said complainant

and therein and thereby prayed, among other things, that the said certificate of deposit be decreed null and of no effect and that the said funds be decreed to belong to the said complainant in said Chancery suit; that thereafter, to-wit, on the 14th day of July, 1914, and since the filing of the last pleadings herein, the Judge of the said Circuit Court of Hamilton County, Florida, duly rendered a final decree in said Chancery suit and therein and thereby adjudged and decreed, among other things the proceeds of said complain-
20 ant's note, to-wit, the sum of Seven Hundred and Thirty-five Dollars, covered by and included in the said certificate of deposit, in this count sued upon, and held by the plaintiff herein, to be impressed with a trust in favor of the said complainant and were adjudged to belong to him, and the plaintiff herein was decreed to have no right, title, interest, claim or demand of, in and to the said proceeds or any part thereof, and this defendant was therein and thereby required and directed to pay the said proceeds over to the said complainant in said Chancery suit, and was enjoined from paying the said proceeds to the plintiff or to anyone for it; and in and by said final decree the certificate of deposit, in this count sued upon, dated the 23rd day of November, 1911, in so far as it covered and included the proceeds derived from said note executed by the complainant in said Chancery suit, was decreed to be void and of no effect; that the said final decree was duly and regularly entered and recorded in Circuit Court Minute Docket No. 11, on page 276 of the Public Records of Hamilton County, Florida, on the 14th day of July, 1914; all of which will more fully appear reference being had to a certified copy of said final decree attached to and made a part of this plea as fully as if set out in hec verba and marked exhibit "D."

And the defendant for a first additional plea to the fifth count of plaintiff declaration, says:

That the said plaintiff ought not to have and maintain its action in this behalf because prior to the commencement of this suit and on, to-wit, the 3rd day of January, 1913, one J. F. Thaggard instituted his suit on the Chancery side of the Circuit Court of Hamilton County, Florida, against this Defendant and the said plaintiff herein and against the Rome Insurance Company and American Bank & Trust Company and this defendant avers that said Circuit Court of Hamilton County, Florida, was and is a Court of general jurisdiction; that in and by said suit so instituted as aforesaid,
21 it was claimed and alleged by the said complainant therein, among other things, that the certificate of deposit, in said count sued upon, was issued by this defendant to cover and include the proceeds of a certain note executed by the said complainant, J. F. Thaggard, and that said note was made payable to the order of the said complainant, and was procured by the false and fraudulent representations of the said Rome Insurance Company, and its Trustee, the said American Bank & Trust Company; that the proceeds of said note so procured as aforesaid were deposited with this defendant in its banking house in Jasper, Hamilton County, Florida, and the certificate of deposit in said count sued upon, represents and covers

the proceeds of said note so procured as aforesaid, and that such deposit has at all times since the date of the said certificate of deposit been and remained in the said banking house of this defendant at Jasper aforesaid, and in and by the said suit the said complainant J. F. Thaggard claimed and alleged that the said deposit was created by the fraud and deceit of said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and that said certificate of deposit, in this count sued upon, was likewise procured by the fraud of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and the said complainant in the said Chancery suit sought to have the said fund, the proceeds of said certificate of deposit, in the defendant's banking house at Jasper aforesaid, impressed with a trust in favor of said complainant and therein and thereby prayed, among other things, that the said certificate of deposit be decreed null and of no effect and that the said funds be decreed to belong to the said complainant in said Chancery suit; that thereafter, to-wit, on the 14th day of July, 1914, and since the filing of the last pleadings herein, the Judge of the said Circuit Court of Hamilton County, Florida, duly rendered a final decree in said Chancery suit and therein and
22 thereby adjudged and decreed among other things, the proceeds of said complainant's note, to-wit, the sum of Two Hundred and Ninety-four Dollars, covered by and included in the said certificate of deposit, in this count sued upon, and held by the plaintiff herein, to be impressed with a trust in favor of the complainant and were adjudged to belong to him, and the plaintiff herein was decreed to have no right, title, interest, claim or demand of, in and to the said proceeds or any part thereof, and this defendant was therein and thereby required and directed to pay the said proceeds over to the said complainant in said Chancery suit, and was enjoined from paying the said proceeds to the plaintiff herein or to anyone for it; and in and by said final decree the certificate of deposit, in this count sued upon, dated the 25th day of November, 1911, in so far as it covered and included the proceeds derived from said note executed by the complainant in said Chancery suit, was decreed to be void and of no effect; that said final decree was duly and regularly entered and recorded in Circuit Court Minute Docket No. 11, page 279, of the Public Records of Hamilton County, Florida, on the 14th day of July 1914; all of which will more fully appear reference being had to a certified copy of said final decree attached to and made a part of this plea as if set out in hec verba, and marked exhibit "E."

And the defendant for additional second plea to the fourth count of plaintiff's declaration, says:

That the said plaintiff ought not to have and maintain its action in this behalf because prior to the commencement of this suit and on, to-wit, the 3rd day of January, 1913, one B. F. Carter instituted his suit on the Chancery side of the Circuit Court of Hamilton County, Florida, against this defendant and the said plaintiff herein, and against the Rome Insurance Company and American Bank &

Trust Company, and this defendant avers that said Circuit
23 Court of Hamilton County, Florida, was and is a Court of general jurisdiction; that in and by said suit so instituted as aforesaid, it was claimed and alleged by the said complainant therein, among other things, that the certificate of deposit, in said count, sued upon, was issued by this defendant to cover and include the proceeds of a certain note executed by the said complainant B. F. Carter, and that said note was made payable to the order of the said complainant, and was procured by the false and fraudulent representations of the said Rome Insurance Company, and its Trustee, the said American Bank & Trust Company; that the proceeds of said note so procured as aforesaid, were deposited with this defendant in its banking house in Jasper, Hamilton County, Florida, and the certificate of deposit, in said count represents and covers the proceeds of said note so procured as aforesaid, and that such deposit has at all times since the date of the said certificate of deposit been and remained in the said banking house of this defendant at Jasper, aforesaid, and in and by the said suit the said complainant B. F. Carter claimed and alleged that the said deposit was created by the fraud and deceit of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and that said certificate of deposit, in this count sued upon, was likewise procured by the fraud of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and the said complainant in the said Chancery suit sought to have the said fund, the proceeds of said certificate of deposit, in the defendant's banking house at Jasper aforesaid, impressed with a trust in favor of said complainant and therein and thereby prayed, among other things, that the said certificate of deposit be decreed null and of no effect and that the said funds be decreed to belong to the said complainant in said Chancery suit; that thereafter, to-wit, on the 14th day of July, 1914, and since the filing of the last pleadings herein, the Judge of the said Circuit Court of Hamilton County, Florida, duly rendered
24 a final decree in said Chancery suit and therein and thereby adjudged and decreed, among other things the proceeds of said complainant's note, to-wit, the sum of Two Hundred and Ninety-four Dollars, covered by and included in the said certificate of deposit, in this count sued upon, and held by the plaintiff herein, to be impressed with a trust in favor of the said complainant and were adjudged to belong to him, and the plaintiff herein was decreed to have no right, title, interest, claim or demand of, in and to the said proceeds or any part thereof, and this defendant was therein and thereby required and directed to pay the said proceeds over to the said complainant in said Chancery suit, and was enjoined from paying the said proceeds to the plaintiff or to anyone for it; and in and by said final decree the certificate of deposit, count sued upon, dated the 25th day of November, 1911, in so far as it covered and included the proceeds derived from said note executed by the complainant in said Chancery suit, was decreed to be void and of no effect; that the said final decree was duly and regularly entered and recorded in Circuit Court Minute Docket No. 11, page 291 of

the Public Records of Hamilton County, Florida, on the 14th day of July, 1914; all of which will more fully appear reference being had to a certified copy of said final decree attached to and made a part of this plea as if set out in hec verba and marked exhibit "F."

And the defendant for a third additional plea to the fifth count of plaintiff's declaration, says:

That the said plaintiff ought not to have and maintain its action in this behalf because prior to the commencement of this suit and on, to-wit, the 3rd day of January, 1913, one C. W. Smith instituted his suit on the Chancery side of the Circuit Court of Hamilton County, Florida, against this defendant and the said plaintiff herein, and against the Rome Insurance Company and American Bank & Trust Company, and this defendant avers that said Circuit Court of
25 Hamilton County, Florida, was and is a Court of general jurisdiction; that in and by said suit so instituted as aforesaid, it was claimed and alleged by the said complainant therein, among other things, that the certificate of deposit, in said count, sued upon, was issued by this defendant to cover and include the proceeds of a certain note executed by the said complainant C. W. Smith, and that said note was made payable to the order of the said complainant, and was procured by the false and fraudulent represenations of the said Rome Insurance Company, and its Trustee, the said American Bank & Trust Company; that the proceeds of said note so procured as aforesaid, were deposited with this defendant in its banking house in Jasper, Hamilton County, Florida, and the certificate of deposit, in said count sued upon, represents and covers the proceeds of said note so procured as aforesaid, and that such deposit has at all times since the date of the said certificate of deposit been and remained in the said banking house of this defendant at Jasper, aforesaid, and in and by the said suit the said complainant C. W. Smith claimed and alleged that the said deposit was created by the fraud and deceit of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and that said certificate of deposit, in this count sued upon, was likewise procured by the fraud of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and the said complainant in the said Chancery suit sought to have the said fund, the proceeds of said certificate of deposit, in the defendant's banking house at Jasper aforesaid, impressed with a trust in favor of said complainant and therein and thereby prayed, among other things, that the said certificate of deposit be decreed null and of no effect and that the said funds be decreed to belong to the said complainant in said Chancery suit; that thereafter, to-wit, on the 14th day of July, 1914, and since the filing of the last pleadings herein, the Judge of the said Circuit Court of
26 Hamilton County, Florida, duly rendered a final decree in said Chancery suit and therein and thereby adjudged and decreed, among other things the proceeds of said complainant's note, to-wit, the sum of Nine Hundred Seventy and 20/100 Dollars, covered by and included in the said certificate of deposit, in this count sued upon, and held by the plaintiff herein, to be impressed with a trust in favor of the said complainant and were adjudged to belong

to him, and the plaintiff herein was decreed to have no right, title, interest, claim or demand of, in and to the said proceeds or any part thereof, and this defendant was therein and thereby required and directed to pay the said proceeds over to the said complainant in said Chancery suit, and was enjoined from paying the said proceeds to the plaintiff or to anyone for it; and in and by said final decree the certificate of deposit, count sued upon, dated the 25th day of November, 1911, in so far as it covered and included the proceeds derived from said note executed by the complainant in said Chancery suit, was decreed to be void and of no effect; that the said final decree was duly and regularly entered and recorded in Circuit Court Minute Docket No. 11, page 273 of the Public Records of Hamilton County, Florida, on the 14th day of July, 1914; all of which will more fully appear reference being had to a certified copy of said final decree attached to and made a part of this plea as if set out in hec verba and marked exhibit "G."

CARTER & McCOLLUM,
S. S. SANFORD,
Attorneys for Defendant.

STATE OF FLORIDA,
County of Duval:

Before me personally came Ira J. Carter, who being duly sworn deposes and says; that he is one of the attorneys of record for the defendant in the above entitled cause; that he has read the above and foregoing pleas and that they are true.

IRA J. CARTER.

27 Sworn and subscribed to before me this 3rd day of August, 1914.

[SEAL.] J. T. CRAWLEY,
Notary Public.

Final Decree.

In Circuit Court, Third Judicial Circuit of Florida, in and for Hamilton County.

In Chancery.

C. L. ADAMS, Complainant,

v.

ROME INSURANCE COMPANY, a Corporation of Rome, Georgia; American Bank & Trust Company, a Corporation of Rome, Georgia; First National Bank of Rome, Georgia, a Corporation, and The Bank of Jasper, of Jasper, Florida, a Corporation, Defendants.

Bill for Relief.

This cause coming on this day for final hearing upon the motion of counsel for complainant for the entry of final decree upon the

amended bill of complaint taken as and for confessed by the said defendants and each of them, on to-wit, the 2nd day of March, A. D. 1914, and the Court being advised in the premises, doth find as follows:

1. That service in the above entitled cause was had on the defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, by publication returnable to February 21st, A. D. 1913.

2. That said non-resident defendants made two motions to quash service on them and this Court made two orders dated respectively the 14th day of March, and the 3rd day of April, A. D. 1913, denying said defendants' motions to quash service.

28 3. That it has been made to appear to me by certified copies of the defendants' said motions to quash service, the orders of this Court denying the same, the appeal entered therefrom to the Supreme Court of Florida, the assignment of errors, and the mandate of said Supreme Court showing the affirmance of the orders made by this Court denying said motions to quash service in the case of B. F. Carter vs. Rome Insurance Company, exhibit "A," et al., that in the appeal in the last named case the said orders of this Court were affirmed by the said Supreme Court.

4. That on the 10th day of April, A. D. 1913, Solicitors for Complainant and Solicitors for Defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, the said defendants' name appearing only specially, entered into a stipulation and filed the same in this Court wherein it was stipulated that the proceedings in this cause should be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of said defendants to quash service in the case of B. F. Carter v. Rome Insurance Company, et al., which said cause was then on file and being prosecuted in this Court, and wherein it was further stipulated that the ultimate decision of the said appeal in the said case of B. F. Carter v. Rome Insurance Company, et al., should be decisive of the validity of the service by publication on the said defendants in this case.

5. That the said defendants and each of them failed to demur, plead to or answer the said amended bill of complaint on or before the Rule day in March, A. D. 1914, and each of the said defendants made default therein.

6. That the clerk of this Court entered a decree pro confesso against each and every of said defendants on the Rule Day in March, A. D. 1914, for failure of said defendants to file any demurrer, plea
29 or answer to said amended bill of complaint and that the entry of said decree pro confesso by the said clerk was regular and proper under the rules and practice of this Court, and that the matters of the bill are proper to be decreed consequent upon such decree pro confesso.

7. That on, to-wit, the 21st day of November, A. D. 1911, the said complainant executed his note, as alleged in said amended bill, payable to his order, for the sum of Three Thousand and no/100 Dollars, and the defendant, American Bank & Trust Company, as trustee for the defendant, Rome Insurance Company, and the complainant by agreement with the defendant, The Bank of Jasper, deposited the said note of the complainant with the said defendant The Bank of Jasper in its banking house in Hamilton County, Florida, and procured from the said defendant The Bank of Jasper a certificate of deposit No. 315 dated the 21 day of November, A. D. 1911, and in which said certificate was included the proceeds of the said note of the complainant; that the proceeds of the said note has at all times since the deposit thereof remained and does still remain in the hands and custody of the said defendant, The Bank of Jasper, in its banking house in Hamilton County, Florida; that said note was executed by the complainant in payment of shares of the capital stock of the defendant, Rome Insurance Company, which said shares were wholly worthless and without value, and was procured by the defendants, Rome Insurance Company, and the American Bank & Trust Company, as its Trustee, by the false and fraudulent representations as set forth in the bill of complaint and the proceeds of complainant's said note was procured to be deposited, and the said certificate of deposit issued as including such proceeds as the result of such false and fraudulent representations so made as alleged in the bill by the representative of the said American Bank & Trust Company, as trustee for the defendant Rome Insurance Company.

30 8. That the equities in this cause are with the complainant and he is entitled to the relief prayed and hereinafter decreed.

Therefore, upon consideration thereof, it is ordered, adjudged and decreed as follows:

(*a*) The said decree pro confesso entered against the said defendants and each of them on, to wit, the Rule Day in March, A. D. 1914, by the Clerk of this Court for want of demurrer, plea or answer, be and the same is hereby in all respects approved, ratified and confirmed.

(*b*) That the pretended contract of agreement made by the complainant with the said Rome Insurance Company and the American Bank & Trust Company, its trustee, providing for the sale and purchase of 100 shares of the capital stock of the said Rome Insurance Company, be and the same is hereby decreed to be wholly void, and of no effect as having been procured by the fraud, deceit, covin and guile of the said Rome Insurance Company, and its trustee, the said American Bank & Trust Company.

(*c*) That the proceeds of complainant's said note, to wit, twenty-nine hundred and forty dollars, covered by and included in said certificate of deposit No. 315 now held by the defendant First

National Bank of Rome are hereby decreed to be impressed with a trust in favor of the complainant and the same are adjudged to belong to him; that the said First National Bank of Rome is hereby declared and decreed to have no right, title, interest, claim or demand of, in and to the said proceeds of the complainant's said note, or any part thereof, and the said defendant The Bank of Jasper be and it is hereby required and directed to pay the said proceeds over to the complainant.

(*d*) That the defendant, The Bank of Jasper, be and it is hereby perpetually enjoined from paying out the proceeds of the
31 said note executed by the complainant and dated as aforesaid, to the said First National Bank of Rome or to any one for it.

(*e*) That the certificate of deposit No. 315 in so far as it covers and includes the proceeds derived from the said note executed by the said complainant, and which certificate was issued by the said defendant, The Bank of Jasper, to the American Bank & Trust Company of Rome, Georgia, as trustee, dated the 21st day of November, A. D. 1911, and for the sum of twenty-nine hundred and forty dollars, be and the same is hereby decreed void and of no effect.

(*f*) That the defendant, The Bank of Jasper, do pay the costs in this case to be taxed by the Clerk of this Court.

Done, ordered, adjudged, and decreed at Chamber, at Jasper, Florida, this 14th day of July, A. D. 1914.

M. F. HORNE,
Judge.

Duly recorded in Circuit Court Minute Docket No. 11, page 277, this July 14th, 1914, public records of Hamilton County, Fla.

[SEAL.] M. P. HUNTER,
Clerk.
By C. S. FRINK,
D. C.

STATE OF FLORIDA,
Hamilton County:

I, M. P. Hunter, Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing instrument is a true and correct copy of the Final Decree in the case of C. L. Adams, vs. Rome Insurance Company, et al., as the same appears in Circuit Court Minute Docket No. 11, on page 277.

Witness my hand and official seal, this 21st day of July, 1914.

M. P. HUNTER,
Clerk.
By G. D. FRINK,
D. C.

32 *Final Decree.*

In Circuit Court, Third Judicial Circuit of Florida, in and for Hamilton County.

In Chancery.

A. L. WISE, Complainant,

v.

ROME INSURANCE COMPANY, a Corporation of Rome, Georgia; American Bank & Trust Company, a Corporation of Rome, Georgia; First National Bank of Rome, Georgia, a Corporation, and The Bank of Jasper, Florida, a Corporation, Defendants.

Bill for Relief.

This cause coming on this day for final hearing upon the motion of counsel for complainant for the entry of final decree upon the amended bill of complaint taken as and for confessed by the said defendants and each of them, on, to wit, the 2nd day of March, A. D. 1914, and the Court being advised in the premises, doth find as follows:

1. That service in the above entitled cause was had on the defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, by publication returnable to February 21st, A. D. 1913.

2. That said non-resident defendants made two motions to quash service on them and this Court made two orders dated respectively the 14th day of March, and the 3rd day of April, A. D. 1913, denying said defendants' motions to quash service.

3. That it has been made to appear to me by certified copies of defendants' said motions to quash service, the orders of this Court denying the same, the appeal entered therefrom to the Supreme Court of Florida, the assignment of errors, and the mandate
33 of said Supreme Court showing the affirmance of the orders made by this Court denying said motions to quash service in the case of B. F. Carter v. Rome Insurance Company, Exhibit "B." et al, that in the appeal in the last named case the said orders of this Court were affirmed by the said Supreme Court.

4. That on the 10th day of April, A. D. 1913, Solicitors for Complainant and Solicitors for Defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, the said defendants' name- appearing only specially, entered into a stipulation and filed the same in this Court wherein it was stipulated that the proceedings in this cause should be stayed pending the prosecution of an appeal from the orders of the Court over-

ruling the motions of said defendants to quash service in the case of B. F. Carter v. Rome Insurance Company, et al., which said cause was then on file and being prosecuted in this Court, and wherein it was further stipulated that the ultimate decision of the said appeal in the said case of B. F. Carter v. Rome Insurance Company, et al., should be decisive of the validity of the service by publication on the said defendants in this case.

5. That the said defendants and each of them failed to demur, plead to or answer the said amended bill of complaint on or before the Rule day in March, A. D. 1914, and each of the said defendants made default therein.

6. That the clerk of this Court entered a decree pro confesso against each and every of said defendants on the Rule Day in March, A. D. 1914, for failure of said defendants to file any demurrer, plea or answer to said amended bill of complaint and that the entry of said decree pro confesso by the said clerk was regular and proper under the rules and practice of this Court, and that the matters of the bill are proper to be decreed consequent upon such decree pro confesso.

34 7. That on, to wit, the 22nd day of November, A. D. 1911, the said complainant executed his note, as alleged in said amended bill, payable to his order, for the sum of Four Hundred Fifty Dollars, and the defendant, American Bank & Trust Company, as trustee for the defendant, Rome Insurance Company, and the complainant by agreement with the defendant, The Bank of Jasper, deposited the said note of the complainant with the said defendant The Bank of Jasper in its banking house in Hamilton County, Florida, and procured from the said defendant The Bank of Jasper a certificate of deposit No. 316, dated the 22nd day of November, A. D. 1911, and in which said certificate was included the proceeds of the said note of the complainant; that the proceeds of the said note has at all times since the deposit thereof remained and does still remain in the hands and custody of the said defendant, The Bank of Jasper, in its banking house in Hamilton County, Florida; that said note was executed by the complainant in payment of shares of the capital stock of the defendant, Rome Insurance Company, which said shares were wholly worthless and without value, and was procured by the defendants, Rome Insurance Company, and the American Bank & Trust Company, as its Trustee, by the false and fraudulent representations as set forth in the bill of complaint and the proceeds of complainant's said note was procured to be deposited, and the said certificate of deposit issued as including such proceeds as the result of such false and fraudulent representations so made as alleged in the bill by the representative of the said American Bank & Trust Company, as trustee for the defendant Rome Insurance Company.

8. That the equities in this cause are with the complainant and he is entitled to the relief prayed and hereinafter decreed.

Therefore, upon consideration thereof, it is ordered, adjudged and decreed as follows:

35 (*a*) The said decree pro confesso entered against the said defendants and each of them on, to wit, the Rule Day in March, A. D. 1914, by the Clerk of this Court for want of demurrer, plea or answer, be and the same is hereby in all respects approved, ratified and confirmed.

(*b*) That the pretended contract of agreement made by the complainant with the said Rome Insurance Company and the American Bank & Trust Company, its trustee, providing for the sale and purchase of 15 shares of the capital stock of the said Rome Insurance Company, be and the same is hereby decreed to be wholly void, and of no effect as having been procured by the fraud, deceit, covin and guile of the said Rome Insurance Company and its trustee, the said American Bank & Trust Company.

(*c*) That the proceeds of complainant's said note, to wit, the sum of four hundred forty-one dollars, covered by and included in said certificate of deposit No. 316 now held by the defendant First National Bank of Rome are hereby decreed to be impressed with a trust in favor of the complainant and the same are adjudged to belong to him; that the said First National Bank of Rome is hereby declared and decreed to have no right, title, interest claim or demand of, in and to the said proceeds of the complainant's said note, or any part thereof, and the said defendant The Bank of Jasper be and it is hereby required and directed to pay the said proceeds over to the defendant.

(*d*) That the defendant, The Bank of Jasper, be and it is hereby perpetually enjoined from paying out the proceeds of the said note executed by the complainant and dated as aforesaid, to the said First National Bank of Rome or to any one for it.

(*e*) That the certificate of deposit No. 316 in so far as it covers and includes the proceeds derived from the said note executed
36 by the said complainant, and which certificate was issued by the said defendant, The Bank of Jasper, to the American Bank & Trust Company of Rome, Georgia, as trustee, dated the 22nd day of November A. D. 1911, and for the sum of four hundred dollars, be and the same is hereby decreed void and of no effect.

(*f*) That the defendant, The Bank of Jasper, do pay the costs in this case to be taxed by the Clerk of this Court.

Done, ordered, adjudged, and decreed at Chamber, at Jasper, Florida, this 14th day of July, A. D. 1914.

M. F. HORNE,
Judge.

Duly recorded in Circuit Court Minute Docket No. 11, page 271, this July 14th, 1914, public records of Hamilton County, Fla.

[SEAL.] M. P. HUNTER,
Clerk,
By C. S. FRINK,
D. C.

STATE OF FLORIDA,
Hamilton County:

I, M. P. Hunter, Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing instrument is a true and correct copy of the Final Decree in the case of A. L. Wise vs. Rome Insurance Company, et al., as the same appears in Circuit Court Minute Docket No. 11, on page 271.

Witness my hand and official seal, this 21st day of July, 1914.

M. P. HUNTER,
Clerk,
By G. D. FRINK,
D. C.

37 *Final Decree.*

In Circuit Court, Third Judicial Circuit of Florida, in and for Hamilton County.

In Chancery.

J. B. WETHERINGTON, Complainant,

v.

ROME INSURANCE COMPANY, a Corporation of Rome, Georgia; American Bank & Trust Company, a Corporation of Rome, Georgia; First National Bank of Rome, Georgia, a Corporation, and The Bank of Jasper, of Jasper, Florida, a Corporation, Defendants.

Bill for Relief.

This cause coming on this day for final hearing upon the motion of counsel for complainant for the entry of final decree upon the amended bill of complaint taken as and for confessed by the said defendants and each of them, on, to-wit, the 2nd day of March, A. D. 1914, and the Court being advised in the premises, doth find as follows:

1. That service in the above entitled cause was had on the defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, by publication returnable to February 21st, A. D. 1913.

2. That said non-resident defendants made two motions to quash service on them and this Court made two orders dated respectively

the 14th day of March, and the 3rd day of April, A. D. 1913, denying said defendants' motions to quash service.

3. That it has been made to appear to me by certified copies of defendants' said motions to quash service, the orders of this Court denying the same, the appeal entered therefrom to the Supreme Court of Florida, the assignment of errors, and the mandate
38 of said Supreme Court showing the affirmance of the orders made by this Court denying said motions to quash service in the case of B. F. Carter v. Rome Insurance Company, exhibit "C," et al., that in the appeal in the last named case the said orders of this Court were affirmed by the said Supreme Court.

4. That on the 10th day of April, A. D. 1913, Solicitors for Complainant and Solicitors for Defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, the said defendants' name appearing only specially, entered into a stipulation and filed the same in this Court wherein it was stipulated that the proceedings in this cause should be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of said defendants to quash service in the case of B. F. Carter v. Rome Insurance Company, et al., which said cause was then on file and being prosecuted in this Court, and wherein it was further stipulated that the ultimate decision of the said appeal in the said case of B. F. Carter v. Rome Insurance Company, et al., should be decisive of the validity of the service by publication on the said defendants in this case.

5. That the said defendants and each of them failed to demur, plead to or answer the said amended bill of complaint on or before the Rule day in March, A. D. 1914, and each of the said defendants made default therein.

6. That the clerk of this Court entered a decree pro confesso against each and every of said defendants on the Rule Day in March, A. D. 1914, for failure of said defendants to file any demurrer, plea or answer to said amended bill of complaint and that the entry of said decree pro confesso by the said clerk was regular and proper under the rules and practice of this Court, and that the matters of the bill are proper to be decreed consequent upon such decree pro confesso.

39 7. That on, to-wit, the 23 day of November, A. D. 1911 the said complainant executed his note, as alleged in said amended bill, payable to his order, for the sum of Fifteen Hundred & no 100 Dollars, and the defendant, American Bank & Trust Company, as trustee for the defendant, Rome Insurance Company, and the complainant by agreement with the defendant, The Bank of Jasper, deposited the said note of the complainant with the said defendant The Bank of Jasper in its banking house in Hamilton County, Florida, and procured from the said defendant The Bank of Jasper a certificate of deposit No. 317, dated the 23rd day of No-

vember, A. D. 1911, and in which said certificate was included the proceeds of the said note has at all times since the deposit thereof remained and does still remain in the hands and custody of the said defendant, The Bank of Jasper, in its banking house in Hamilton County, Florida; that said note was executed by the complainant in payment of shares of the capital stock of the defendant, Rome Insurance Company, which said shares were wholly worthless and without value, and was procured by the defendants, Rome Insurance Company, and the American Bank & Trust Company, as its Trustee, by the false and fraudulent representations as set forth in the bill of complaint and the proceeds of complainant's said note was procured to be deposited, and the said certificate of deposit issued as including such proceeds as the result of such false and fraudulent representations so made as alleged in the bill by the representative of the said American Bank & Trust Company, as trustee for the defendant Rome Insurance Company.

8. That the equities in this cause are with the complainant and he is entitled to the relief prayed and hereinafter decreed.

Therefore, upon consideration thereof, it is ordered, adjudged and decreed as follows:

(*a*) The said decree pro confesso entered against the said defendants and each of them on, to-wit, the Rule Day in March, A. D. 1914, by the Clerk of this Court for want of demurrer, plea or answer, be and the same is hereby in all respects approved, ratified and confirmed.

(*b*) That the pretended contract of agreement made by the complainant with the said Rome Insurance Company and the American Bank & Trust Company, its trustee, providing for the sale and purchase of 50 shares of the capital stock of the said Rome Insurance Company, be and the same is hereby decreed to be wholly void, and of no effect as having been procured by the fraud, deceit, covin and guile of the said Rome Insurance Company, and its trustee, the said American Bank & Trust Company.

(*c*) That the proceeds of complainant's said note, to-wit, fourteen hundred twenty & no 100 dollars, covered by and included in said certificate of deposit No. 317 now held by the defendant First National Bank of Rome are hereby decreed to be impressed with a trust in favor of the complainant and the same are adjudged to belong to him; that the said First National Bank of Rome is hereby declared and decreed to have no right, title, interest claim or demand of, in and to the said proceeds of the complainant's said note, or any part thereof, and the said defendant The Bank of Jasper be and it is hereby required and directed to pay the said proceeds over to the complainant.

(*d*) That the defendant, The Bank of Jasper, be and it is hereby perpetually enjoined from paying out the proceeds of the said note

executed by the complainant and dated as aforesaid, to the said First National Bank of Rome or to any one for it.

(*e*) That the certificate of deposit No. 317 in so far as it covers and includes the proceeds derived from the said note executed
41 by the said complainant, and which certificate was issued by the said defendant, The Bank of Jasper, to the American Bank & Trust Company of Rome, Georgia, as trustee, dated the 23rd day of November, A. D. 1911, and for the sum of fourteen hundred and seventy dollars, be and the same is hereby decreed void and of no effect.

(*f*) That the defendant, The Bank of Jasper, do pay the costs in this case to be taxed by the Clerk of this Court.

Done, ordered, adjudged, and decreed at Chamber, at Jasper, Florida, this 14th day of July, A. D. 1914.

M. F. HORNE,
Judge.

Duly recorded in Circuit Court Minute Docket No. 11, page 283, this July 14th, 1914, public records of Hamilton County, Fla.

[SEAL.] M. P. HUNTER,
Clerk,
By C. S. FRINK,
D. C.

STATE OF FLORIDA,
Hamilton County:

I, M. P. Hunter, Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing instrument is a true and correct copy of the Final Decree in the case of J. B. Wetherington vs. Rome Insurance Company, et al., as the same appears in Circuit Court Minute Docket No. 11, on page 283.

Witness my hand and official seal, this 21st day of July, 1914.

M. P. HUNTER,
Clerk,
By G. S. FRINK,
D. C.

42 *Final Decree.*

In Circuit Court, Third Judicial Circuit of Florida, in and for Hamilton County.

In Chancery.

W. M. O'CAIN, Complainant,

v.

ROME INSURANCE COMPANY, a Corporation of Rome, Georgia; American Bank & Trust Company, a Corporation of Rome, Georgia; First National Bank of Rome, Georgia, a Corporation, and The Bank of Jasper, of Jasper, Florida, a Corporation, Defendants.

Bill for Relief.

This cause coming on this day for final hearing upon the motion of counsel for complainant for the entry of final decree upon the amended bill of complaint taken as and for confessed by the said defendants and each of them, on, to-wit, the 2nd day of March, A. D. 1914, and the Court being advised in the premises, doth find as follows:

1. That service in the above entitled cause was had on the defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, by publication returnable to February 21st, A. D. 1913.

2. That said non-resident defendants made two motions to quash service on them and this Court made two orders dated respectively the 14th day of March, and the 3rd day of April, A. D. 1913, denying said defendant's motions to quash service.

3. That it has been made to appear to me by certified copies of defendants' said motions to quash service, the orders of this Court denying the same, the appeal entered therefrom to the Supreme Court of Florida, the assignment of errors, and the mandate of said
43 Supreme Court showing the affirmance of the orders made by this Court denying said motions to quash service in the case of B. F. Carter v. Rome Insurance Company, exhibit "D," et al., that in the appeal in the last named case the said orders of this Court were affirmed by the said Supreme Court.

4. That on the 10th day of April, A. D. 1913, Solicitors for Complainant and Solicitors for Defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, the said defendants' name appearing only specially, entered into a stipulation and filed the same in this Court wherein it was stipulated that the proceedings in this cause should be stayed pending the prosecution of an appeal from the orders of the Court over-

ruling the motions of said defendants to quash service in the case of B. F. Carter v. Rome Insurance Company, et al., which said cause was then on file and being prosecuted in this Court, and wherein it was further stipulated that the ultimate decision of the said appeal in the said case of B. F. Carter v. Rome Insurance Company, et al., should be decisive of the validity of the service by publication on the said defendants in this case.

5. That the said defendants and each of them failed to demur, plead to or answer the said amended bill of complaint on or before the Rule day in March, A. D. 1914, and each of the said defendants made default therein.

6. That the clerk of this Court entered a decree pro confesso against each and every of said defendants on the Rule Day in March, A. D. 1914, for failure of said defendants to file any demurrer, plea or answer to said amended bill of complaint and that the entry of said decree pro confesso by the said clerk was regular and proper under the rules and practice of this Court, and that the matters of the bill are proper to be decreed consequent upon such decree pro confesso.

44 7. That on, to-wit, the 30th day of November, A. D. 1911, the said complainant executed his note, as alleged in said amended bill, payable to his order, for the sum of Seven Hundred Fifty & no/100 Dollars, and the defendant, American Bank & Trust Company, as trustee for the defendant, Rome Insurance Company, and the complainant by agreement with the defendant, The Bank of Jasper, deposited the said note of the complainant with the said defendant The Bank of Jasper in its banking house in Hamilton County, Florida, and procured from the said defendant The Bank of Jasper a certificate of deposit No. 318, dated the 30th day of November, A. D. 1911, and in which said certificate was included the proceeds of the said note has at all times since the deposit thereof remained and does still remain in the hands and custody of the said defendant, The Bank of Jasper, in its banking house in Hamilton County, Florida; that said note was executed by the complainant in payment of shares of the capital stock of the defendant, Rome Insurance Company, which said shares were wholly worthless and without value, and was procured by the defendants, Rome Insurance Company, and the American Bank & Trust Company, as its Trustee, by the false and fraudulent representations as set forth in the bill of complaint and the proceeds of complainant's said note was procured to be deposited, and the said certificate of deposit issued as including such proceeds as the result of such false and fraudulent representations so made as alleged in the bill by the representative of the said American Bank & Trust Company, as trustee for the defendant Rome Insurance Company.

8. That the equities in this cause are with the complainant and he is entitled to the relief prayed and hereinafter decreed.

Therefore, upon consideration thereof, it is ordered, adjudged and decreed as follows:

45 (*a*) The said decree pro confesso entered against the said defendants and each of them on, to-wit, the Rule Day in March, A. D. 1914, by the Clerk of this Court for want of demurrer, plea or answer, be and the same is hereby in all respects approved, ratified and confirmed.

(*b*) That the pretended contract of agreement made by the complainant with the said Rome Insurance Company and the American Bank & Trust Company, its trustee, providing for the sale and purchase of 25 shares of the capital stock of the said Rome Insurance Company, be and the same is hereby decreed to be wholly void, and of no effect as having been procured by the fraud, deceit, covin and guile of the said Rome Insurance Company, and its trustee, the said American Bank & Trust Company.

(*c*) That the proceeds of complainant's said note, to-wit, the sum of seven hundred thirty-five dollars, covered by and included in said certificate of deposit No. 318 now held by the defendant First National Bank of Rome are hereby decreed to be impressed with a trust in favor of the complainant and the same are adjudged to belong to him; that the said First National Bank of Rome is hereby declared and decreed to have no right, title, interest claim or demand of, in and to the said proceeds of the complainant's said note, or any part thereof, and the said defendant The Bank of Jasper be and it is hereby required and directed to pay the said proceeds over to the complainant.

(*d*) That the defendant, The Bank of Jasper, be and it is hereby perpetually enjoined from paying out the proceeds of the said note executed by the complainant and dated as aforesaid, to the said First National Bank of Rome or to any one for it.

(*e*) That the certificate of deposit No. 318 in so far as it covers and includes the proceeds derived from the said note executed
46 by the said complainant, and which certificate was issued by the said defendant, The Bank of Jasper, to the American Bank & Trust Company of Rome, Georgia, as trustee, dated the 30th day of November, A. D. 1911, and for the sum of seven hundred fifty dollars, be and the same is hereby decreed void and of no effect.

(*f*) That the defendant, The Bank of Jasper, do pay the costs in this case to be taxed by the Clerk of this Court.

Done, ordered, adjudged, and decreed at Chamber, at Jasper, Florida, this 14th day of July, A. D. 1914.

M. F. HORNE,
Judge.

Duly recorded in Circuit Court Minute Docket No. 11, page 276, this July 14th, 1914, public records of Hamilton County, Fla.

[SEAL.]

M. P. HUNTER,
Clerk.

By C. S. FRINK,
D. C.

STATE OF FLORIDA,
Hamilton County:

I, M. P. Hunter, Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing instrument is a true and correct copy of the Final Decree in the case of W. M. O'Cain vs. Rome Insurance Company et al., as the same appears in Circuit Court Minute Docket No. 11, on page 276.

Witness my hand and official seal, this 21st day of July, 1914.

M. P. HUNTER,
Clerk.

By G. S. FRINK,
D. C.

17 *Final Decree.*

In Circuit Court, Third Judicial Circuit of Florida, in and for Hamilton County.

In Chancery.

J. F. THOSSARD, Complainant,

v.

ROME INSURANCE COMPANY, a Corporation of Rome, Georgia, American Bank & Trust Company, a Corporation of Rome, Georgia, First National Bank of Rome, Georgia, a Corporation, and The Bank of Jasper, of Jasper, Florida, a Corporation, Defendants.

Bill for Relief.

This cause coming on this day for final hearing upon the motion of counsel for complainant for the entry of final decree upon the amended bill of complaint taken as and for confessed by the said defendants and each of them, on, to-wit, the 2nd day of March, A. D. 1914, and the Court being advised in the premises, doth find as follows:

1. That service in the above entitled cause was had on the defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, by publication returnable to February 21st, A. D. 1913.

2. That said non-resident defendants made two motions to quash service on them and this Court made two orders dated respectively the 14th day of March, and the 3rd day of April, A. D. 1913, denying said defendants' motions to quash service.

3. That it has been made to appear to me by certified copies of defendants' said motions to quash service, the orders of this Court denying the same, the appeal entered therefrom to the Supreme Court of Florida, the assignment of errors, and the mandate
18 of said Supreme Court showing the affirmance of the orders made by this Court denying said motions to quash service in the case of B. F. Carter v. Rome Insurance Company, Exhibit "E," et al., that in the appeal in the last named case the said orders of this Court were affirmed by the said Supreme Court.

4. That on the 10th day of April, A. D. 1913, Solicitors for Complainant and Solicitors for Defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, the said defendants' name appearing only specially, entered into a stipulation and filed the same in this Court wherein it was stipulated that the proceedings in this cause should be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of said defendants to quash service in the case of B. F. Carter v. Rome Insurance Company et al., which said cause was then on file and being prosecuted in this Court, and wherein it was further stipulated that the ultimate decision of the said appeal in the said case of B. F. Carter v. Rome Insurance Company et al., should be decisive of the validity of the service by publication on the said defendants in this case.

5. That the said defendants and each of them failed to demur, plead to or answer the said amended bill of complaint on or before the Rule day in March, A. D. 1914, and each of the said defendants made default therein.

6. That the clerk of this Court entered a decree pro confesso against each and every of said defendants on the Rule Day in March, A. D. 1914, for failure of said defendants to file any demurrer, plea or answer to said amended bill of complaint and that the entry of said decree pro confesso by the said clerk was regular and proper under the rules and practice of this Court, and that the matters of the bill are proper to be decreed consequent upon such decree pro confesso.

19 7. That on, to-wit, the 25th day of November, A. D. 1911, the said complainant executed his note, as alleged in said amended bill, payable to his order, for the sum of Three Hundred Dollars, and the defendant, American Bank & Trust Company, as trustee for the Defendant, Rome Insurance Company, and the complainant by agreement with the defendant, The Bank of Jasper, deposited the said note of the complainant with the said defendant The Bank of Jasper in its banking house in Hamilton County, Florida, and procured from the said defendant The Bank of Jasper a certificate of deposit No. 319, dated the 25 day of November, A. D. 1911, and in which said certificate was included the proceeds of the said note has at all times since the deposit thereof remained and does still remain in the hands and custody of the said defendant. The

Bank of Jasper, in its banking house in Hamilton County, Florida; that said note was executed by the complainant in payment of shares of the capital stock of the defendant, Rome Insurance Company, which said shares were wholly worthless and without value, and was procured by the defendants, Rome Insurance Company, and the American Bank & Trust Company, as its Trustee, by the false and fraudulent representations as set forth in the bill of complaint and the proceeds of complainant's said note was procured to be deposited, and the said certificate of deposit issued as including such proceeds as the result of such false and fraudulent representations so made as alleged in the bill by the representative of the said American Bank & Trust Company, as trustee for the defendant Rome Insurance Company.

8. That the equities in this cause are with the complainant and he is entitled to the relief prayed and hereinafter decreed.

Therefore, upon consideration thereof, it is ordered, adjudged and decreed as follows:

50 (*a*) The said decree pro confesso entered against the said defendants and each of them on, to-wit, the Rule Day in March, A. D. 1914, by the Clerk of this Court for want of demurrer, plea or answer, be and the same is hereby in all respects approved, ratified and confirmed.

(*b*) That the pretended contract of agreement made by the complainant with the said Rome Insurance Company and the American Bank & Trust Company, its trustee, providing for the sale and purchase of 10 shares of the capital stock of the said Rome Insurance Company, be and the same is hereby decreed to be wholly void, and of no effect as having been procured by the fraud, deceit, covin and guile of the said Rome Insurance Company, and its trustee, the said American Bank & Trust Company.

(*c*) That the proceeds of complainant's said note, to-wit, two hundred ninety-four dollars, covered by and included in said certificate of deposit No. 319 now held by the defendant First National Bank of Rome are hereby decreed to be impressed with a trust in favor of the complainant and the same are adjudged to belong to him; that the said First National Bank of Rome is hereby declared and decreed to have no right, title, interest claim or demand of, in and to the said proceeds of the complainant's said note, or any part thereof, and the said defendant The Bank of Jasper be and it is hereby required and directed to pay the said proceeds over to the complainant.

(*d*) That the defendant, The Bank of Jasper, be and it is hereby perpetually enjoined from paying out the proceeds of the said note executed by the complainant and dated as aforesaid, to the said First National Bank of Rome or to any one for it.

(*e*) That the certificate of deposit No. 319 in so far as it
51 covers and includes the proceeds derived from the said note executed by the said complainant, and which certificate was

issued by the said defendant, The Bank of Jasper, to the American Bank & Trust Company of Rome, Georgia, as trustee, dated the 25th day of November, A. D. 1911, and for the sum total of fifteen hundred fifty-eight & 20-100 dollars, be and the same is hereby decreed void and of no effect.

(f) That the defendant, The Bank of Jasper, do pay the costs in this case to be taxed by the Clerk of this Court.

Done, ordered, adjudged, and decreed at Chamber, at Jasper, Florida, this 14th day of July, A. D. 1914.

M. F. HORNE,
Judge.

Duly recorded in Circuit Court Minute Docket No. 11, page 279 this July 14th, 1914, public records of Hamilton County, Fla.

[SEAL.] M. P. HUNTER,
Clerk.

By C. S. FRINK,
D. C.

STATE OF FLORIDA,
Hamilton County:

I, M. P. Hunter, Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing instrument is a true and correct copy of the Final Decree in the case of J. F. Thaggard vs. Rome Insurance Company, et al., as the same appears in Circuit Court Minute Docket No. 11, on page 279.

Witness my hand and official seal, this 21st day of July, 1914.

M. P. HUNTER,
Clerk.

By C. S. FRINK,
D. C.

52 *Final Decree.*

In Circuit Court, Third Judicial Circuit of Florida, in and for Hamilton County.

In Chancery.

B. F. CARTER, Complainant,

v.

ROME INSURANCE COMPANY, a Corporation, of Rome, Georgia; American Bank & Trust Company, a Corporation, of Rome, Georgia, and First National Bank, of Rome, a Corporation, of Rome, Georgia, and The Bank of Jasper, a Corporation, of Jasper, Florida, Defendants.

This cause coming on this day to be finally heard upon the motion of counsel for complainant for the entry of final decree upon the amended bill of complaint taken as and for confessed by the said

defendants and each of them on, to-wit, the 2nd day of March, A. D. 1914, and the Court being advised in the premises doth find as follows:

1. That on, to-wit, the 10th day of April, A. D. 1913, the defendants, Rome Insurance Company, American Bank & Trust Company, and the First National Bank of Rome, Georgia, entered their appeal to the Supreme Court of the State of Florida from two certain orders made by this Court dated respectively the 14th day of March, and the 3rd day of April, A. D. 1913, denying the motions of the said defendants to quash the service in this cause, said appeal being returnable before the said Supreme Court on the 10th day of June, A. D. 1913.

2. That the Supreme Court of the State of Florida, on, to-wit, the 9th day of December, A. D. 1913, rendered its decision upon said appeal so taken as aforesaid, and thereby affirmed the ruling of this Court denying the said motions of the said defendants to quash the service in said cause.

53 3. That thereafter, to-wit, on the 12th day of January, A. D. 1914, the mandate of said Supreme Court, in this cause on appeal, showing the affirmance of the orders denying defendants' motion to quash service, was filed in the office of the Clerk of this Court. Exhibit "F."

4. That the said defendants and each of them failed to demur, plead to or answer the said amended bill of complaint on or before the Rule Day in March, A. D. 1914, each of the said defendants made default therein.

5. That the clerk of this Court entered a decree pro confesso against each and every of said defendants on the Rule Day in March, A. D. 1914, for failure of said defendants to file any demurrer, plea, or answer to the said amended bill of complaint, and that the entry of said decree pro confesso by the said clerk was regular and proper under the rules and practice of this Court, and that the matters of the bill are proper to be decreed consequent upon such decree pro confesso.

6. That on, to-wit, the 25th day of November, 1911, the said complainant executed his note, as alleged in said amended bill, payable to his order, for the sum of Three Hundred Dollars, and the defendant American Bank & Trust Company, as Trustee for the defendant, Rome Insurance Company, and the complainant by agreement with the defendant, The Bank of Jasper, deposited the said note of the complainant with the defendant, The Bank of Jasper, at his Banking House in Hamilton County, Florida, and procured from said defendant, The Bank of Jasper, a certificate of deposit No. 319, dated the 25 day of November, A. D. 1911, and in which said certificate was included the proceeds of the said note of the complainant; that the proceeds of the said note has at all times since the deposit thereof remained and does still remain in the hands and custody of the said

defendant, The Bank of Jasper, in its Banking House in
54 Hamilton County, Florida; that the said note was executed by the complainant in payment for shares of the capital stock of the defendant, Rome Insurance Company, which said shares were wholly worthless and without value, and was procured by the defendants, Rome Insurance Company and the American Bank & Trust Company, as its Trustee, by the false and fraudulent representations as set forth in the bill of complaint and the proceeds of complainant's said note was procured to be deposited and the said certificate of deposit issued as including such proceeds as the result of such false and fraudulent representations so made as alleged in the bill by the representative of the said American Bank & Trust Company, as trustee for the defendant, Rome Insurance Company.

7. That the equities in this cause are with the complainant, and he is entitled to the relief prayed and hereinafter decreed.

Therefore, upon consideration thereof, it is ordered, adjudged and decreed as follows:

(*a*) The said decree pro confesso entered against the said defendants and each of them on, to-wit, the Rule Day in March, A. D. 1914, by the clerk of this Court, for want of demurrer, plea or answer, be and the same is hereby in all respects approved, ratified and confirmed.

(*b*) That the pretended contract of agreement made by the complainant with the said Rome Insurance Company, and the American Bank & Trust Company, its trustee, providing for the sale and purchase of ten shares of the capital stock of the said Rome Insurance Company, be and the same is hereby decreed to be wholly void, and of no effect as having been procured by the fraud, deceit, covin, and guile of the said Rome Insurance Company, and its trustee, the said American Bank & Trust Company.

55 (*c*) That the proceeds of the complainant's said note, to-wit, the sum of two hundred ninety-four dollars, covered by and included in said certificate of deposit No. 319 now held by the defendant, First National Bank of Rome, Georgia, are hereby decreed to be impressed with a trust in favor of the said complainant and the same are adjudged to belong to him; that the said First National Bank of Rome, Georgia, is hereby declared and decreed to have no right, title, interest, claim or demand of, in and to the said proceeds of the complainant's said note or any part thereof, and the said The Bank of Jasper be and it is hereby required and directed to pay the said proceeds over to the complainant.

(*d*) That the defendant, The Bank of Jasper, be and it is hereby perpetually enjoined from paying out the proceeds of the said note executed by the complainant and dated as aforesaid, to the said defendant, First National Bank of Rome, Georgia, or to any one for it.

(*e*) That the certificate of deposit No. 319 in so far as it covers and includes the proceeds derived from the said note executed by the com-

plainant, and which certificate was issued by the said The Bank of Jasper to the American Bank & Trust Company, of Rome, Georgia, as Trustee, dated 25 day of November, A. D. 1911, and for the total sum of fifteen hundred fifty-eight and 20/100 dollars be and the same is hereby decreed to be void and of no effect.

It is further ordered and decreed herein that the defendant herein, The Bank of Jasper, pay the cost of this suit to be taxed by the Clerk of this Court.

Done, ordered, adjudged, and decreed at Chamber, at Jasper, Florida, this the 14th day of July, A. D. 1914.

M. F. HORNE,
Judge.

56 Duly recorded in Circuit Court Minute Docket No. 11, page 291, this July 14th, 1914, public records of Hamilton County, Fla.

[SEAL.] M. P. HUNTER,
Clerk,
By G. S. FRINK,
D. C.

STATE OF FLORIDA,
Hamilton County:

I, M. P. Hunter, Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing instrument is a true and correct copy of the Final Decree in the case of B. F. Carter versus Rome Insurance Company, et al., as appears on record in Circuit Court Minute Docket No. 11, page 291.

Witness my hand and official seal, this July 21st, 1914.

[SEAL.] M. P. HUNTER,
Clerk,
By G. S. FRINK,
D. C.

Final Decree.

In Circuit Court, Third Judicial Circuit of Florida, in and for Hamilton County.

In Chancery.

C. W. SMITH, Complainant,

v.

ROME INSURANCE COMPANY, a Corporation of Rome, Georgia; American Bank & Trust Company, a Corporation of Rome, Georgia; First National Bank of Rome, Georgia, a Corporation, and The Bank of Jasper, of Jasper, Florida, a Corporation, Defendants.

Bill for Relief.

This cause coming on this day for final hearing upon the motion of counsel for complainant for the entry of final decree upon the

amended bill of complaint taken as and for confessed by the said defendants and each of them, on, to-wit, the 2nd day of March,
57 A. D. 1914, and the Court being advised in the premises, doth find as follows:

1. That service in the above entitled cause was had on the defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, by publication returnable to February 21st, A. D. 1913.

2. That said non-resident defendants made two motions to quash service on them and this Court made two orders dated respectively the 11th day of March, and the 3rd day of April, A. D. 1913, denying said defendant's motions to quash service.

3. That it has been made to appear to me by certified copies of defendants' said motions to quash service, the orders of this Court denying the same, the appeal entered therefrom to the Supreme Court of Florida, the assignment of errors, and the mandate of said Supreme Court showing the affirmance of the orders made by this Court denying said motions to quash service in the case of B. F. Carter v. Rome Insurance Company, et al., that in the appeal in the last named case the said orders of this Court were affirmed by the said Supreme Court.

4. That on the 10th day of April, A. D. 1913, Solicitors for Complainant and Solicitors for Defendants, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, the said defendants named appearing only specially, entered into a stipulation and filed the same in this Court wherein it was stipulated that the proceedings in this cause should be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of said defendants to quash service in the case of B. F. Carter v. Rome Insurance Company, et al., which said cause was then on file and being prosecuted in this Court, and wherein it was further stipulated that the ultimate decision of the said
58 appeal in the said case of B. F. Carter v. Rome Insurance Company, et al., should be decisive of the validity of the service by publication on the said defendants in this case.

5. That the said defendants and each of them failed to demur, plead to or answer the said amended bill of complaint on or before the Rule day in March, A. D. 1914, and each of the said defendants made default therein.

6. That the clerk of this Court entered a decree pro confesso against each and every of said defendants on the Rule Day in March, A. D. 1914, for failure of said defendants to file any demurrer, plea or answer to said amended bill of complaint and that the entry of said decree pro confesso by the said clerk was regular and proper under the rules and practice of this Court, and that the matters of the bill are proper to be decreed consequent upon such decree pro confesso,

7. That on, to-wit, the 25th day of November, A. D. 1911, the said complainant executed his note, as alleged in said amended bill, payable to his order, for the sum of Nine Hundred and Ninety Dollars, and the defendant, American Bank & Trust Company, as trustee for the defendant, Rome Insurance Company, and the complainant by agreement with the defendant, The Bank of Jasper, deposited the said note of the complainant with the said defendant The Bank of Jasper in its banking house in Hamilton County, Florida, and procured from the said defendant The Bank of Jasper a certificate of deposit No. 319, dated the 25th day of November, A. D. 1911, and in which said certificate was included the proceeds of the said note of the complainant; that the proceeds of the said note has at all times since the deposit thereof remained and does still remain in the hands and custody of the said defendant, The Bank of Jasper, in its banking house in Hamilton County, Florida; that said note was executed by
59 the complainant in payment of shares of the capital stock of the defendant, Rome Insurance Company, which said shares were wholly worthless and without value, and was procured by the defendants, Rome Insurance Company, and the American Bank & Trust Company, as its Trustee, by the false and fraudulent representations as set forth in the bill of complaint and the proceeds of complainant's said note was procured to be deposited, and the said certificate of deposit issued as including such proceeds as the result of such false and fraudulent representations so made as alleged in the bill by the representative of the said American Bank & Trust Company, as trustee for the defendant Rome Insurance Company.

8. That the equities in this cause are with the complainant and he is entitled to the relief prayed and hereinafter decreed.

Therefore, upon consideration thereof, it is ordered, adjudged and decreed as follows:

(*a*) The said decree pro confesso entered against the said defendants and each of them on, to-wit, the Rule Day in March, A. D. 1914, by the Clerk of this Court for want of demurrer, plea or answer, be and the same is hereby in all respects approved, ratified and confirmed.

(*b*) That the pretended contract of agreement made by the complainant with the said Rome Insurance Company and the American Bank & Trust Company, its trustee, providing for the sale and purchase of 33 shares of the capital stock of the said Rome Insurance Company, be and the same is hereby decreed to be wholly void, and of no effect as having been procured by the fraud, deceit, covin and guile of the said Rome Insurance Company, and its trustee, the said American Bank & Trust Company.

60 (*c*) That the proceeds of complainant's said note, to-wit, the sum of nine hundred seventy & 20/100 dollars, covered by and included in said certificate of deposit No. 319, now held by the defendant First National Bank of Rome, are hereby decreed to be impressed with a trust in favor of the complainant and the same

are adjudged to belong to him; that the said First National Bank of Rome is hereby declared and decreed to have no right, title, interest, claim or demand of, in and to the said proceeds of the complainant's said note, or any part thereof, and the said defendant, The Bank of Jasper, be and it is hereby required and directed to pay the said proceeds over to the complainant.

(*d*) That the defendant, The Bank of Jasper, be and it is hereby perpetually enjoined from paying out the proceeds of the said note executed by the complainant and dated as aforesaid, to the said First National Bank of Rome or to any one for it.

(*e*) That the certificate of deposit No. 319 in so far as it covers and includes the proceeds derived from the said note executed by the said complainant, and which certificate was issued by the said defendant, The Bank of Jasper, to the American Bank & Trust Company of Rome, Georgia, as trustee, dated the 25th day of November, A. D. 1911, and for the sum total of fifteen hundred fifty-eight and 20/100 dollars, be and the same is hereby decreed void and of no effect.

(*f*) That the defendant, The Bank of Jasper, do pay the costs in this case to be taxed by the Clerk of this Court.

Done, ordered, adjudged and decreed at Chambers, at Jasper, Florida, this 14th day of July, A. D. 1914.

M. F. HORNE,
Judge.

61 Duly recorded in Circuit Court Minute Docket No. 11, page 273, this July 14th, 1914, public records of Hamilton County, Fla.

M. P. HUNTER,
Clerk.
[SEAL.]
By G. S. FRINK,
D. C.

STATE OF FLORIDA,
Hamilton County:

I, M. P. Hunter, Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing instrument is a true and correct copy of the Final Decree in the case of C. W. Smith, vs. Rome Insurance Company et al., as the same appears in Circuit Court Minute Docket No. H, on page 273.

Witness my hand and official seal, this 21st day of July, 1914.

M. P. HUNTER,
Clerk.
By G. S. FRINK,
D. C.

Indorsed: Additional Pleas of Defendant. Filed August 3, 1914, E. D. Dodge, clerk.

Demurrer to Additional Pleas.

In the District Court of the United States in and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation,

vs.

THE BANK OF JASPER, a Corporation.

Comes now the plaintiff in the above entitled cause, by Kay & Doggett, its attorneys, and demurs severally to the additional pleas filed by the defendant herein on August 3rd, 1914, to the first, second, third, fourth and fifth counts of plaintiff's declaration,
62 because each of said pleas is severally bad in substance; and for substantial matters of law to be argued severally as to each of said pleas, the plaintiff assigns the following:

1. Said plea sets up no defense to the cause of action alleged in said count.

2. It appears by said plea that said Circuit Court of Hamilton County Florida, never, at any time during the progress of said alleged chancery suit, had or obtained jurisdiction over the plaintiff herein.

3. Said chancery suit was an action in personam, in which constructive service upon a resident of a State other than that in which the suit was brought was ineffectual to give the Court jurisdiction over a person so served.

4. Said plea does not allege or show that personal service in said chancery suit was ever at any time had upon the plaintiff herein, or that said plaintiff herein ever at any time made any sort of a general appearance in said cause.

5. Said plea affirmatively shows that in said chancery suit no personal service was had upon the plaintiff herein, and that the plaintiff herein at no time during the progress of said chancery suit entered any sort of a general appearance in said chancery suit.

6. Said plea does not allege or show that the plaintiff herein ever at any time waived, in any manner, shape or form, want of jurisdiction of said Court in said Chancery suit over the plaintiff herein.

7. Jurisdiction could not be assumed or exercised by the Court in said chancery suit merely because the subject matter of the suit was within the power of the Court.

63 8. No decree entered in said chancery suit could bind anyone not personally served with process, or who did not appear

9. No decree entered in said chancery suit could effect the rights of the plaintiff herein arising out of the certificate of deposit set up in said count.

KAY & DOGGETT,
Attorneys for Plaintiff.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JOHN L. DOGGETT,
Attorney for Plaintiff.

STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary Public, in and for the State of Florida at large, one Henry C. Clark, who being by me first duly sworn, deposes and says that he is of counsel for plaintiff in the foregoing cause, and duly authorized to make this affidavit, and that the foregoing demurrer is not interposed for the purpose of delay.

HENRY C. CLARK.

Sworn to and subscribed before me this the 5th day of September, A. D. 1914.

E. P. OWEN, JR.,
[SEAL.] *Notary Public, State of Florida, at Large.*

My commission expires February 17th, 1917.

Filed Sept. 7, 1914.
E. D. DODGE,
Clerk.

61 In District Court of United States, Southern District of Florida.

FIRST NATIONAL BANK OF ROME

vs.

THE BANK OF JASPER, FLORIDA.

Comes now the defendant by its undersigned attorneys and joins in the demurrer of the plaintiff to the plea filed August 3rd, 1914, to the first, second, third, fourth and fifth counts of plaintiff's declaration.

CARTER & McCOLLUM,
S. S. SANFORD,
Attorneys for Defendant.

* * * * * * *

Order of Court.

In the District Court of the United States in and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA

vs.

THE BANK OF JASPER.

This cause coming on to be heard upon the undisposed of demurrers herein, and the same having been submitted, and the Court being advised in the premises, upon consideration thereof, it is hereby ordered and adjudged:

1st. That the plaintiff's demurrers to the defendant's additional pleas filed August 3rd, 1914, to the first, second, third, fourth and fifth counts of plaintiff's declaration be and each of them are hereby overruled.

2nd. That the defendant's demurrers to the plaintiff's additional and fifth replication to the defendant's sixth pleas to the first, second, third, fourth and fifth counts of plaintiff's declaration, and
65 defendant's demurrers to the plaintiff's additional and sixth replications to the defendant's eighth pleas to the first, second, third, fourth and fifth counts of plaintiff's declaration be and each of them are hereby overruled.

3rd. That the defendant's demurrers to the plaintiff's third, fourth and fifth replications to the defendant's seventh pleas to the first, second, third, fourth and fifth counts of plaintiff's declaration be and each of them are hereby overruled.

Done and ordered this 12th day of January, A. D. 1915.

RHYDON M. CALL,
Judge.

Filed Jan. 12, 1915.

E. D. DODGE,
Clerk.

Motion.

In the District Court of the United States in and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff,

vs.

THE BANK OF JASPER, FLORIDA, Defendant.

Comes now the Plaintiff in the above entitled cause by Kay & Doggett, its attorneys, and moves the Court for leave to file in said cause replications to Defendant's Additional Pleas heretofore filed in said cause.

KAY & DOGGETT,
Attorneys for Plaintiff.

Filed June 15, 1915.
W. L. DEVORE,
Clerk.

66 We hereby consent to the above motion, saying unto ourselves any and all exceptions or objections to the substance of said replications.

CARTER & McCOLLUM,
Attorneys for Defendant.

Order of Court.

The above motion coming on to be heard and having been submitted, upon consideration thereof it is hereby ordered and adjudged that said motion be, and the same is hereby granted and the defendant given until Rule Day in July, 1915, to plead thereto as advised.
Done and ordered this 15th day of June, A. D. 1915.

RHYDON M. CALL,
Judge.

Replications to Additional Pleas of Defendant.

In the District Court of the United States in and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff,

vs.

THE BANK OF JASPER, FLORIDA, Defendant.

Comes now the plaintiff in the above entitled cause, by Kay & Doggett, its attorneys, and for replication to defendant's additional plea to the first count of plaintiff's declaration, says:

That said Chancery suit in said plea mentioned was an action in personam; that no personal service in said chancery suit was ever at any time had upon the plaintiff herein; that the plaintiff herein did not at any time or in any way make any sort of a general appearance in said chancery suit; that the plaintiff herein did not at any time waive, in any manner, shape or form, want of jurisdiction of the Court in said chancery suit over the plaintiff herein; that the plaintiff herein in no way appeared in said chancery suit except only specially, solely and only to contest the pretended service by publication attempted to be made in said chancery suit upon the plaintiff herein; that a copy of the first of said motions to quash service which were filed by the plaintiff herein in said chancery suit is hereto attached and marked "Exhibit A" and hereby made a part hereof; that upon Complainant in said chancery suit amending his Bill of Complaint therein, the plaintiff herein filed in said chancery suit said second motion to quash service, copy of which said second motion to quash service is hereto attached, marked "Exhibit B," and hereby made a part hereof; that upon the denial of said motions to quash service, the parties named in said chancery suit, through their respective counsel entered into said stipulation mentioned in said final decree, and unsigned copy of which stipulation is hereto attached, marked "Exhibit C," and hereby made a part hereof; that a copy of the complete transcript of record in said chancery suit of B. F. Carter vs. Rome Insurance Company, et al., as the same was filed in the Supreme Court of the State of Florida, is hereto attached, marked "Exhibit D," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said chancery suit of B. F. Carter vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit E," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said chancery suit of J. H. Corlett vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit F"; that a copy of the mandate of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit G" and hereby made a part hereof; that after said opinions of said Supreme Court of Florida were announced the plaintiff herein took no further part whatsoever in said chancery suit of C. L. Adams vs. Rome Insurance Company, et al nor in said Chancery suit of B. F. Carter vs. Rome Insurance Company, et al., wherefore this plaintiff says that no decree entered in said chancery suit of C. L. Adams vs. Rome Insurance Company et al., could affect or take away any of the rights of the plaintiff herein, arising out of the certificate of deposit herein sued upon.

And for replication to defendant's additional plea to the second count of plaintiff's declaration, plaintiff says:

That said chancery suit in said plea mentioned was an action in personam; that no personal service in said chancery suit was ever at any time had upon the plaintiff herein; that the plaintiff herein did not at any time or in any way make any sort of a general appearance in said chancery suit; that the plaintiff herein did not at any time waive, in any manner, shape or form, want of jurisdiction of the

Court in said Chancery suit over the plaintiff herein; that the plaintiff herein in no way appeared in said chancery suit except only specially, solely and only to contest the pretended service by publication attempted to be made in said chancery suit upon the plaintiff herein; that a copy of the first of said motions to quash service which were filed by the plaintiff herein in said chancery suit is hereto attached and marked "Exhibit H" and hereby made a part hereof; that upon Complainant in said chancery suit amending his Bill of Complaint therein, the plaintiff herein filed in said chancery suit said second motion to quash service, copy of which said second motion to quash service is attached hereto; marked "Exhibit J" and hereby made a part hereof; that upon the denial of said motions to quash service, the parties named in said chancery suit, through their respective counsel, entered into said stipulation mentioned in said final decree, an unsigned copy of which stipulation is hereto attached, marked "Exhibit K," and hereby made a part hereof; that a copy of the complete transcript of record in said chancery suit of B. F. Carter vs. Rome Insurance Company, et al., as the same was filed in the Supreme Court of Florida, is hereto attached, marked "Exhibit D" and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida, in said Chancery suit of B. F. Carter vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit E," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida, in said chancery suit of J. H. Corbett vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit F"; that a copy of the mandate of the Supreme Court of Florida in said chancery suit of B. F. Carter vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit G," and hereby made a part hereof; that after said opinions of said Supreme Court of Florida were announced, the plaintiff herein took no further part whatsoever in said chancery suit of A. L. Wise vs. Rome Insurance Company, et al., nor in said chancery suit of B. F. Carter vs. Rome Insurance Company, et al., wherefore this plaintiff says that no decree entered in said chancery suit of A. L. Wise vs. Rome Insurance Company, et al., could affect or take away any of the rights of the plaintiff herein, arising out of the certificate of deposit herein sued upon.

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And for replication to defendant's additional plea to the third count of plaintiff's declaration, plaintiff says:

That said Chancery suit in said plea mentioned was an action in personam; that no personal service in said chancery suit was ever at any time had upon the plaintiff herein; that the plaintiff herein did not at any time or in any way make any sort of a general appearance in said Chancery suit; that the plaintiff herein did not at any time waive, in any manner, shape *of* form, want of jurisdiction of the Court in said Chancery suit over the plaintiff herein; that the plaintiff herein in no way appeared in said Chancery suit except only specially solely and only to contest the pretended service by publication attempted to be made in said Chancery suit upon the plaintiff herein; that a copy of the first of said motions to quash service which were filed by the plain-

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tiff herein in said Chancery suit is hereto attached, and marked "Exhibit L" and hereby made a part thereof; that upon Complainant in said Chancery suit amending his Bill of Complaint herein, the plaintiff herein filed in said Chancery suit said second motion to quash service, copy of which said second motion to quash service is attached hereto, marked "Exhibit M" and hereby made a part hereof; that upon the denial of said motions to quash service, the parties named in said Chancery suit, through their respective counsel, entered into said stipulation mentioned in said final decree, an unsigned copy of which stipulation is hereto attached, marked "Exhibit N," and hereby made a part hereof; that a copy of the complete transcript of record in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., as the same was filed in the Supreme Court of the State of Florida, is hereto attached, marked "Exhibit D," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., is hereto attached, marked "Exhibit E" and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of J. H. Corbett vs. Rome Insurance Company et al., is hereto attached, marked "Exhibit F"; that a copy of the mandate of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., is hereto atached, marked "Exhibit G" and hereby made a part hereof; that after said opinion of said Supreme Court of Florida were announced, the plaintiff herein took no further part whatsoever in said Chancery suit of J. B. Wetherington vs. Rome Insurance Company, et al., nor in said
71 Chancery suit of B. F. Carter vs. Rome Insurance Company et al., wherefore this plaintiff says that no decree entered in said Chancery suit of J. B. Wetherington vs. Rome Insurance Company et al., could affect or take away any of the rights of the plaintiff herein, arising out of the certificate of deposit herein sued upon.

And for replication to defendant's additional plea to the fourth count of plaintiff's declaration, plaintiff says:

That said Chancery suit in said plea mentioned was an action in personam; that no personal service in said Chancery suit was ever at any time had upon the plaintiff herein; that the plaintiff herein did not at any time or in any way make any sort of a general appearance in said Chancery suit; that the plaintiff herein did not at any time waive, in any manner, shape or form, want of jurisdiction of the Court in said Chancery suit over the plaintiff herein; that the plaintiff herein in no way appeared in said Chancery suit except only specially, solely and only to contest the pretended service by publication attempted to be made in said Chancery suit upon the plaintiff herein; that a copy of the first of said motions to quash service which were filed by the plaintiff herein in said Chancery suit is hereto attached and marked "Exhibit P" and hereby made a part thereof; that upon Complainant in said Chancery suit amending his Bill of Complaint therein, the plaintiff herein filed in said Chancery suit said second motion to quash service, copy of which said second motion to quash service is attached hereto, marked "Ex-

hibit Q," and hereby made a part hereof; that upon the denial of said motions to quash service that parties named in said Chancery suit through their respective counsel, entered into said stipulation mentioned in said final decree, an unsigned copy of which stipulation is hereto attached, marked "Exhibit R" and hereby made a part hereof; that a copy of the complete transcript of record in
72 said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., as the same was filed in the Supreme Court of Florida, is hereto attached, marked "Exhibit D," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., is hereto attached, marked "Exhibit E," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of the State of Florida in said Chancery suit of J. H. Corbett vs. Rome Insurance Company et al., is hereto attached, marked "Exhibit F"; that a copy of the mandate of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., is hereto attached, marked "Exhibit G" and hereby made a part hereof; that after said opinions of said Supreme Court of Florida were announced, the plaintiff herein took no further part whatsoever in said Chancery suit of W. M. O'Cain vs. Rome Insurance Company et al., now in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., wherefore this plaintiff says that no decree entered in said Chancery suit of W. M. O'Cain vs. Rome Insurance Company et al., could affect or take away any of the rights of the plaintiff herein, arising out of the certificate of deposit herein sued upon.

And for replication to defendant's first additional plea to the fifth count of plaintiff's declaration, plaintiff says:

That said Chancery suit in said plea mentioned was an action in personam; that no personal service in said Chancery suit was ever at any time time had upon the plaintiff herein; that the plaintiff herein did not at any time or in any way make any sort of a general appearance in said Chancery suit; that the plaintiff herein did not at any time waive, in any manner, shape or form, want of jurisdiction of the Court in said Chancery suit over the plaintiff herein; that the plaintiff herein in no way appeared in said
73 Chancery suit except only specially, solely and only to contest the pretended service by publication attempted to be made in said Chancery suit upon the plaintiff herein; that a copy of the first of said motions to quash service which were filed by the plaintiff herein in said Chancery suit is hereto attached and marked "Exhibit S," and hereby made a part hereof; that upon Complainant in said Chancery suit amending his Bill of Complaint therein, the plaintiff herein filed in said Chancery suit said second motion to quash service, copy of which said second motion to quash service is attached hereto, marked "Exhibit T" and hereby made a part hereof; that upon the denial of said motions to quash service, the parties named in said Chancery suit, through their respective counsel, entered into said stipulation mentioned in said final decree,

an unsigned copy of which stipulation is hereto attached, marked "Exhibit U," and hereby made a part hereof; that a copy of the complete transcript of record in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., as the same was filed in the Supreme Court of the State of Florida, is hereto attached, marked "Exhibit D," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., is hereto attached, marked "Exhibit E," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of J. H. Corbett vs. Rome Insurance Company et al., is hereto attached, marked "Exhibit F," that a copy of the mandate of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., is hereto attached, marked "Exhibit G," and hereby made a part hereof; that after said opinions of said Supreme Court of Florida were announced, the plaintiff herein took no further part whatsoever in said Chancery suit of J. F. Thaggard vs. Rome Insurance Company et al., now in said Chancery suit of B. F. Carter vs. Rome Insurance Company
71 et al., wherefore this plaintiff says that no decree entered in said Chancery suit of J. F. Thaggard vs. Rome Insurance Company et al., could affect or take away any of the rights of the plaintiff herein, arising out of the certificate of deposit herein sued upon.

And for replication to defendant's second additional plea to the fifth count of plaintiff's declaration, plaintiff says:

That said Chancery suit in said plea mentioned was an action in personam, that no personal service in said Chancery suit was ever at any time had upon the plaintiff herein; that the plaintiff herein did not at any time or in any way make any sort of a general appearance in said chancery suit; that the plaintiff herein did not at any time waive, in any manner, shape *of* form, want of jurisdiction of the Court in said Chancery suit over the plaintiff herein; that the plaintiff herein in no way appeared in said chancery suit except only specially, solely and only to contest the pretended service by publication attempted to be made in said Chancery suit upon the plaintiff herein; that a copy of the complete transcript of record in said Chancery suit, as the same was filed in the Supreme Court of the State of Florida, is hereto attached, marked "Exhibit D," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit is hereto attached, marked "Exhibit E," and hereby made part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit J. H. Corbett vs. Rome Insurance Company et al., is hereto attached, marked Exhibit F; that a copy of the mandate of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., is hereto attached, marked "Exhibit G," and hereby made a part hereof; that after said opinion of said Supreme Court of Florida was announced, the plaintiff herein took no further part whatsoever in said Chancery suit of

B. F. Carter vs. Rome Insurance Company et al., wherefore
75 this plaintiff says that no decree entered in said Chancery suit of B. F. Carter vs. Rome Insurance Company et al., could affect or take away any of the rights of the Plaintiff herein arising out of the certificate of deposit herein sued upon.

And for replication to defendant's third additional plea to the fifth count of plaintiff's declaration, plaintiff says:

That said Chancery suit in said plea mentioned was an action in personam; that no personal service in said Chancery suit was ever at any time had upon the plaintiff herein; that the plaintiff herein did not at any time or in any way make any sort of a general appearance in said Chancery suit; that the plaintiff herein did not at any time waive, in any manner, shape or form, want of jurisdiction of the Court in said Chancery suit over the plaintiff herein; that the plaintiff herein in no way appeared in said Chancery suit except only specially, solely and only to contest the pretended service by publication attempted to be made in said Chancery suit upon the plaintiff herein; that a copy of the first of said motions to quash service which were filed by the plaintiff herein in said Chancery suit is hereto attached and marked, "Exhibit V," and hereby made a part hereof; that upon Complainant in said Chancery suit amending his Bill of Complaint therein, the plaintiff herein filed in said Chancery suit said second motion to quash service, copy of which said second motion to quash service is attached hereto, marked "Exhibit W," and hereby made a part hereof; that upon the denial of said motions to quash service, the parties named in said Chancery suit, through their respective counsel, entered into said stipulation mentioned in said final decree, an unsigned copy of which stipulation is hereto attached, marked "Exhibit X," and hereby made a part hereof; that a copy of the complete transcript of record in said Chancery suit of

B. F. Carter vs. Rome Insurance Company, et al., as the same
76 was filed in the Supreme Court of Florida, is hereto attached, marked "Exhibit D," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit E," and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of J. H. Corbett vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit F;" that a copy of the mandate of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit G," and hereby made a part hereof; that after said opinions of said Supreme Court of Florida were announced, the plaintiff herein took no further part whatsoever in said Chancery suit of C. W. Smith vs. Rome Insurance Company, et al., now in said Chancery suit of B. F. Carter vs. Rome Insurance Company, et al., wherefore this plaintiff says that no decree entered in said Chancery suit of C. W. Smith vs. Rome Insurance Company, et al., could affect or take away any of the rights of the plaintiff herein, arising out of the certificate of deposit herein sued upon.

KAY & DOGGETT,
Attorneys for Plaintiff.

77 *Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.*

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

C. L. ADAMS, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Come now defendants, Rome Insurance Company; American Bank and Trust Company, Trustee; and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service on the following grounds, to-wit:

1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporation- not resident in Florida, and have not received personal service of process herein in the State of Florida, and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught; and these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service,
78 by reason of which no legal service has been had upon the said defendants nor have said defendants accepted service herein, nor have they waived due service of process upon them, nor have they voluntarily appeared herein.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to Said Purpose.

Exhibit A.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

C. L. ADAMS, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Come now defendants, Rome Insurance Company; American Bank and Trust Company, Trustee; and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught, upon the following grounds, to-wit:

79 1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporation-, not resident in Florida, and have not received personal service of process herein in the State of Florida.

3rd. Because this is an action in personam, and said defendants have not received personal service of process herein in the State of Florida.

4th Because as appears upon the face of the record in this cause legal service of process has not been had upon the said defendants. And these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the defects in said pretended service, by reason of which no legal service has been had upon the said defendants, now [nor] have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT.

Attorneys and Solicitors, Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to Said Purpose.

"Exhibit B."

80 *Stipulation of Counsel.*

In the Circuit Court, Third Judicial Circuit, in and for Hamilton County, Fla.

In Chancery.

C. L. ADAMS

vs.

ROME INSURANCE COMPANY et al.

It is hereby stipulated and agreed by and between S. S. Sanford and Carter & McCollum, Solicitors for the complainant herein, and Kay & Doggett, who have not appeared generally, but who have appeared only specially as Solicitors for the defendants herein, Rome Insurance Company, American Bank & Trust Company and First National Bank of Rome, Georgia, and who are making this agreement specially, solely for the purpose herein expressed:

That proceedings in this cause be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of the said defendants to quash service in the case of B. F. Carter vs. Rome Insurance Company, et al., which said case is now on file and being prosecuted in this Court;

That the ultimated decision of the said appeal in the said case of B. F. Carter vs. Rome Insurance Company shall be decisive of the validity of the service by publication on the said defendants in this case, and if the service in the said Carter case be ultimately held defective, and ordered quashed, then the service in this case, the validity of which involves identically the same legal questions as that in the Carter case, shall be held defective and shall be quashed; and

That this stipulation of Counsel shall not be considered as constituting a general appearance of the said defendants in this cause:

81 This agreement being signed and entered into this 10th day of April A. D. 1913

_____,

_____,

Solicitors for Complainants.

_____,

Solicitors for Defendants Rome Insurance Co., American Bank & Trust Co., and First National Bank of Rome, Ga., Who Have Appeared Only Specially in said Cause.

"Exhibit C."

82 TRANSCRIPT OF RECORD OF PROCEEDINGS IN THE CIRCUIT COURT OF HAMILTON COUNTY, FLORIDA, IN THE SUIT OF B. F. CARTER, COMPLAINANT, VS. ROME INSURANCE COMPANY ET AL., DEFENDANTS, THEREIN LATELY PENDING.

* * * * * * *

On the 3rd day of January, 1913, the Complainant filed his original bill, in words and figures following:

Bill of Complaint.

In the Circuit Court of the Third Judicial Circuit of Florida in and for Hamilton County.

In Chancery.

B. F. CARTER, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Bill for Relief.

To Hon. Mallory F. Horne, Judge of the Circuit Court of the Third Judicial Circuit of Florida in and for Hamilton County, in Chancery sitting:

Your orator B. F. Carter, a citizen and resident of Hamilton County, Florida, by his undersigned solicitors, brings this his bill of complaint against Rome Insurance Company, a corporation, organized under the laws of Georgia, of Rome, in Floyd County, Georgia; American Bank & Trust Company, a corporation organized under the laws of Georgia, of Rome, in said Floyd County, Georgia; First National Bank of Rome, a corporation organized under the laws of United States of Rome, in said Floyd County, Georgia; Bank
83 of Jasper, a corporation organized under the laws of Florida, of Jasper, in Hamilton County, Florida, defendants, and thereupon your orator would respectfully show unto your Honor, as follows:

1. That on, to-wit, about the 25 day of Nov. 1911, the defendant Rome Insurance Company was a foreign corporation organized and existing under and by virtue of the laws of the State of Georgia, with its principal place of business at the City of Rome, in said state, and was then and there engaged in the Insurance business, and the defendant, American Bank and Trust Company was on the date aforesaid, likewise a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its place of business at Rome, in said State of Georgia, and was engaged in the banking

business and acting as trustee for those persons and corporations desiring its services as trustee.

2. That on, to-wit, about the 25th day of Nov. 1911, the said defendant, Rome Insurance Company, was desirous of offering for sale and selling shares of the capital stock, and in order to effectuate its desire and purpose in that respect, it caused to be named as its trustee for such purpose, its co-defendant, the said American Bank and Trust Company of Rome, Georgia, and authorized the said Trustee to offer for sale and sell to persons desiring the same, shares of the capital stock of the Rome Insurance Company, and which said shares were to be fully paid and non-assessible and of the par value of Ten dollars ($10.00) per share, but to be sold by the said trustee at the sum of Thirty dollars ($30.00) per share, or on the ratio of Three Dollars ($3.00) to be paid for each one dollar ($1.00) par value of stock; and the said Rome Insurance Company and the American Bank and Trust Company in order to effectuate the sale of the capital stock of the said Rome Insurance Company, sent their agent or representative into Hamilton County, Florida, where your orator
84 resides and still resides, and there solicited your orator to purchase through the said trustee, certificates of shares in the capital stock of the said Rome Insurance Company.

3. And your orator further alleges that the said Rome Insurance Company and the American Bank and Trust Company, of Rome, Georgia, by and through their said agent or representative, then and there, to-wit, about the 25 day of Nov. 1911, and in Hamilton County, Florida, approached your orator and opened up negotiations with him for the purpose of inducing your orator to purchase shares of said capital stock of the Rome Insurance Company and then and there falsely and fraudulently and with the intent and purpose to deceive and defraud your orator, represented to your orator that the shares of the capital stock in the said Rome Insurance Company so offered for sale by the said Rome Insurance Company and the American Bank and Trust Company, as trustee, was of great value, to-wit of the value of Three dollars ($3.00) for each one dollar ($1.00), of said capital stock; that your orator was then and there wholly ignorant and uninformed as to the value of said stock, of which ignorance and lack of information the said Rome Insurance Company and American Bank and Trust Company, trustee, knew or ought to have known, and your orator was wholly dependent upon said Insurance Company and its trustee for information with respect to said capital stock, and he believed and relied upon the statements and representations so made to him, as aforesaid, with respect to the value of said capital stock; that the said Insurance Company and its said trustee, further falsely and fraudulently and with the intention and purpose to deceive and defraud your orator, then and there represented to him that the said Rome Insurance Company was a solvent corporation and possessed of assets in value far in excess of its liabilities, and your orator relied upon and placed confidence in said fals

representations; and your orator charges that all of the said
85 representations aforesaid, so made to him by the said Insurance Company and its trustee, were then and there wholly false and untrue, and the said Insurance Company and its said trustee well knew the same to be false and untrue, and intended by said false and fraudulent representations to deceive and defraud your orator, and did deceive and defraud him, and by means thereof your orator was induced to purchase and agree to pay for and did purchase and agree to pay for, in reliance upon such false and fraudulent representations 10 shares of the capital stock of said Rome Insurance Company, on the basis of Three dollars ($3.00) to be paid for each One dollar ($1.00) face value of said capital stock, and amounting in the aggregate to the sum of 300 dollars so agreed to be paid for by your orator for such capital stock. And your orator further alleges that certificates of shares in capital stock of the said Rome Insurance Company were issued to your orator and your orator alleges that said capital stock so sold to him was then and there wholly without value and was not then and there worth Three dollars ($3.00) or any other sum, for each One dollar ($1.00) of the face value thereof, and the said Rome Insurance Company was at that time hopelessly involved and embarrassed financially and was then wholly insolvent, although your orator was not at that time aware of the worthlessness of the capital stock of the Rome Insurance Company, or aware of its insolvency; that both the said Rome Insurance Company and its said trustee, then knew or ought to have known that the capital stock of said Insurance Company was worthless and the said Company practically insolvent.

4. And your orator further alleges that by an agreement entered into between your orator and American Bank and Trust Company as trustee, for the said Rome Insurance Company, and its co-defendant, the said Bank of Jasper, it was then and there to-wit, about the 25 day of Nov. 1911, and in Hamilton County, Florida, agreed that your orator as consideration to be paid for *said* shares of the capital
stock of the Rome Insurance Company should execute a note
86 payable to orator's order, for the sum of $300 *dollars*, and deposit the same in the said Bank of Jasper; which said bank was to discount said note and issue a certificate of deposit for the proceeds thereof, and said certificate of deposit to be turned over to the American Bank and Trust Company, of Rome, Georgia, as such trustee, and payable at future date; that in pursuance of the said tripartite agreement, your orator executed said note and the American Bank and Trust Company procured a certificate of deposit to be issued for the purpose thereof, and which proceeds were included in certificate No. 319 of said bank, dated at Jasper, Florida, on the 25 day of Nov. 1911, and wherein it was certified by W. S. Murrow, as Cashier of the said Bank of Josper, that said American Bank and Trust Company of Rome, as trustee, had deposited in said bank $1,558.20 *dollars* payable to the order of itself on return of said certificate properly indorsed, with interest at four per cent per annum, compounded quarterly, and said certificate payable on or after November 25, 1912; that said certificate was delivered by said Bank of

Jasper, to the agent of Rome Insurance Company and American Bank and Trust Company. Your orator further alleges that the negotiations and agreement made with him for the purchase of said shares in the capital stock in the Rome Insurance Company, and the method by which the same should be paid for, including the execution of said note by your orator and the issuance of a certificate of deposit by the said Bank of Jasper, were all discussed and agreed upon by your orator, American Bank and Trust Company, as trustee, as aforesaid, and the said Bank of Jasper, Florida, in advance of and at the time of said purchase and the same were contemporaneous and formed but one act and agreement.

5. And your orator would further allege that the note executed by him and refer-ed to in the proceding paragraph is now in the hands of the said Bank of Jasper, Florida, and the certificate of de-
87 posit is in the hands of said defendant, First National Bank of Rome, by virtue of a pretended assignment or transfer thereof claimed to have been made by said American Bank and Trust Company, yet the said note is outstanding in the hands of the said Bank and the bank has refused to deliver up the same to your orator for cancellation; that by reason of the false and fraudulent representation so made to your orator by the Rome Insurance Company and The American Bank and Trust Company, Trustee, through their agent and representative, mention whereof is made in the third paragraph of this bill, the purchase of said shares of stock in the said Rome Insurance Company by your orator and the agreement therefor, *in* and ought to be decreed of no force and effect, as having been procured by the fraud, deceit, covin and guile of the said Insurance Company, and its trustee, American Bank and Trust Company, and the note of your orator now held by the said Bank of Jasper, is and ought to be decreed to be wholly void, and of no effect, and the same should be delivered up to your orator.

6. And your orator would further allege that the pretended contract for the sale and purchase of said shares of stock in the said Rome Insurance Company, with your orator, made by or on behalf of the said Rome Insurance Company, and the said American Bank and Trust Company is and ought to be decreed to be void because your orator alleges the truth to be that the said Rome Insurance Company and the said American Bank and Trust Company, were and each of them was at the time — making the aforesaid contract with your orator and the execution of said note and the certificate of deposit, a foreign corporation and organized by and under the laws of the State of Georgia, and by virtue of Section 1, of Chapter 5717 of the laws of Florida, neither of said Corporations were authorized to transact business or to acquire, hold or dispose of property in the State of Florida until it shall have filed in the office of the
88 Secretary of State, a duly authenticated copy of its charter or articles of incorporation, and shall have received from said Secretary of State a permit to transact business in Florida; and your orator alleges that at the time of the making of the pretended con-

tract of sale and purchase of shares of the capital stock of the said Rome Insurance Company by your orator as hereinbefore alleged, and at the time of the execution of said note and the issuance of said certificate of deposit neither the said Rome Insurance Company or the said American Bank and Trust Company, had filed in the office of the Secretary of State a duly authenticated copy of its charter articles of incorporation nor had they or either of them received from the Secretary a permit to transact business in this State.

7. And your orator further alleges that he is ready, willing and able and hereby offers to surrender to the said Rome Insurance Company, or its trustee, the American Bank and Trust Company, the certificate of shares of stock issued to him and stands ready and offers to comply with such order and decree of your Honor with respect to the surrender of said certificate as may be entered in this suit.

In as much as your orator is without adequate remedy except in equity, he prays as follows:

(*a*) That your Honor take jurisdiction of the parties and subject matter of this bill, and grant to your orator the relief hereinafter prayed.

(*b*) That the certificate of deposit, in so far as the same covers and includes the proceeds derived from the note executed by your orator, as hereinbefore alleged, and which certificate was issued by the Bank of Jasper, Florida, to the American Bank and Trust Company of Rome, Georgia, as Trustee, dated 25 day of Nov. 1911, and for the total sum of $1,558.20 *dollars*, to be decreed to be void and

89 (*c*) That the note executed by your orator payable to his order for the sum of 300 dollars, dated 25 day of Nov. 1911, and delivered to the Bank of Jasper, Florida, be decreed to be void and of no effect, and the said bank be required to cancel and surrender the same to your orator.

(*d*) That the pretended contract of agreement made by your orator with the said Rome Insurance Company and the American Bank and Trust Company, its Trustee, providing for the said sale and purchase of 10 shares of the capital stock of the said Rome Insurance Company be decreed to be wholly void and of no effect.

(*e*) That the American Bank and Trust Company, Trustee, as aforesaid, and the Rome Insurance Company, and each of them, be enjoined and restrained by order of this Court from instituting any suit against your orator on account of the said pretended contract of sale, and purchase of shares of stock in the Rome Insurance Company.

(*f*) That the Bank of Jasper, Florida, be restrained by order of this Court from instituting any suit or action to cover on account of the said note executed by your orator, dated 25 day of Nov. 1911, and now held by the said Bank of Jasper, Florida.

(*g*) That the said injunction hereinbefore prayed for be made preliminarily and temporary until the further order of the Court and upon final hearing that the same may be made perpetual.

(*h*) That your orator have such other, further and general relief in the premises as the equities of his case may require and to your Honor may seem meet and proper.

And may it please your Honor to grant unto your orator the State's writ of subpœna in Chancery, issuing out of and under
90 the seal of this Court, and directed to the said defendants Rome Insurance Company, a corporation under the laws of Georgia; American Bank and Trust Company, a corporation under the laws of Georgia; First National Bank of Rome, Georgia, a corporation under the laws of the U. S. and the Bank of Jasper, a corporation under the laws of Florida, directing and commanding them and each of them to be and appear before this honorable Court at a time and place to be therein designated and under a certain penalty to be therein stipulated, then and there true, perfect and complete answer make (but not under oath, the oath to said answers being hereby specifically waived) to all and singular the allegations in the bill contained, and to stand to abide by and perform the orders and decree of your Honor in the premises.

And your orator will ever pray, etc.

CARTER & McCOLLUM.

STATE OF FLORIDA,
County ——, *ss:*

Before me personally appeared —— ——, who being duly sworn deposed and says that affiant is the complainant in the above entitled cause and has read the foregoing bill and knows the contents thereof and that the same is true.

B. F. CARTER.

Sworn to and subscribed before me this 3 day of Jan., A. D. 1913.
[SEAL.] J. B. WETHERINGTON,
C. C. C.

91 On the 3rd day of January, 1913, complainant filed an affidavit in said case, in words and figures as follows:

In Circuit Court, Hamilton County, Florida.

In Chancery.

B. F. CARTER, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Bill for Relief.

STATE OF FLORIDA,
Hamilton County:

Before me personally appeared B. F. Carter, who being duly sworn, on oath says; that affiant is the complainant in the above entitled cause; that the defendant Rome Insurance Company is a corporation organized and existing under and by virtue of the laws of Georgia, with its principal office and place of business in the City of Rome, in Floyd County, State of Georgia; and the defendant American Bank & Trust Company is a corporation organized and existing under and by virtue of the laws of Georgia, with its principal office and place of business in the City of Rome, in County of Floyd, State of Georgia; and the defendant First National Bank of Rome, Georgia, is a corporation organized and existing under and by virtue of the laws of the United States with its principal office and place of business in the City of Rome, in Floyd County, State of Georgia; that neither of said corporations is a resident of or domiciled in the State of Florida; that there is no person in the State of Florida, the service of a subpoena upon whom would bind such defendants, or either of them.

B. F. CARTER.

Sworn to and subscribed before me this 3 day of Jan. A. D. 1913.
[SEAL.] J. B. WETHERINGTON,
Clerk Ct. Ct.

92 On the the 3rd day of January, 1913, the Clerk of the Court issued an order of publication, directed to defendants, — was as follows:

To Rome Insurance Co., a corporation under the laws of Georgia; American Bank & Trust Co., a corporation under the laws of Georgia, trustee, of Rome, Ga., and to the First National Bank of Rome, Ga., a corporation under the laws of the United States:

It appearing from affidavit accompanying Bill of Complaint filed against you by B. F. Carter, in the Circuit Court of Hamilton County, Florida, in Chancery, on the 3rd day of January, 1913, that you and each of you, are non-residents of the State of Florida, and are residents of Rome, Georgia, it is hereby ordered that you

and each of you do appear to the bill of complaint on the 21st day of February, A. D. 1913, at the Clerk's office of said Circuit Court in Jasper, Florida.

It is further ordered that this notice be published in the Jasper News, a weekly newspaper published in Jasper, Hamilton County, Florida, once each week for four successive weeks.

Done and ordered this 3rd day of January, A. D. 1913.

[SEAL.] J. B. WETHERINGTON,
Clerk Circuit Court.

93 On the 20th day of February, 1913, the defendants filed special appearance and motion to quash service by publication, which was as follows:

Special Appearance to Quash Pretended Service by Publication of Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER, Complainant.

vs.

ROME INSURANCE COMPANY et al., Defendants.

Come now defendants, Rome Insurance Company, American Bank and Trust Company, Truster, and First National Bank of Rome, Georgia, by Kay and Doggett, their solicitors and Counsel, and not appearing generally but appearing specially, solely, and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service upon the following grounds, to wit:

1st. Because on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida, and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught; and these defendants pray the judgment of this

94 Honorable Court whether they will be compelled to appear herein or answer hereto, because of the many defects in said pretended service by reason of which no legal service has been had

upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys and Solicitors, Appearing Specially, Solely, and Only for the Purpose of this Motion and Limiting the same to said Purposes.

On the 25th day of February, 1913, the Foreman of The Jasper News, the newspaper in which notice of publication was made, filed an affidavit setting up proof of publication thereof.

On the 25th day of February, 1913, the Clerk of the Circuit Court made and filed a certificate setting up therein that order of publication directed to defendants was made, published, posted and mailed, in accordance with law.

On the 14th day of March, 1913, the Court made an order allowing the complainant to file an amended bill, and overruling the motion of defendants under original bill to quash service had upon them by publication, which said order is in words and figures, as follows:

In Circuit Court, Third Judicial Circuit, of the State of Florida in and for Hamilton County.

B. F. CARTER

vs.

ROME INSURANCE COMPANY, AMERICAN BANK & TRUST COMPANY, Trustee; THE BANK OF JASPER.

Bill for Relief.

This cause came on to be heard upon motion of defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, to quash and set aside service by publication, in so far as same relates to said defendant, upon notice, and pending the argument of counsel, upon such motion, the complainant made his motion to be allowed to file an amended bill, and upon consideration, it is ordered and decreed by the Court:

1. That complainant's said motion to be allowed to file an amended bill of complaint is hereby granted, and the complainant is hereby allowed ten days in which to file such amended bill.

2. That said defendants' said motion to quash and set aside the service by publication as the same appears of record in this proceeding be, and the same is hereby overruled and the defendants are allowed thirty days from this date in which to further plead, proceed, answer *of* [or] demur.

This March 14th, A. D. 1913. M. F. HORNE,
Judge Circuit Court, Hamilton Co., Fla.

Duly recorded in Circuit Court, Minute Docket No. 11, page 117 this March 14th, A. D. 1913.

M. P. HUNTER,
Clerk.

[SEAL.]

By G. S. FRINK,
D. C.

96 On the 24th day of March, 1913, complainant filed his amended bill, which is in words and figures as follows:

Amended Bill of Complaint.

In the Circuit Court of the Third Judicial Circuit of Florida in and for Hamilton County.

In Chancery.

B. F. CARTER, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Bill of Relief.

To Hon. Mallory F. Horne, judge of the Circuit Court of the Third Judicial Circuit of Florida in and for Hamilton County, in chancery sitting:

Your orator, B. F. Carter, a citizen and resident of Hamilton County, Florida by his undersigned solicitors, by leave of the Court first had and obtained, brings this his bill of complaint against Rome Insurance Company, and American Bank and Trust Company, both corporations organized under the laws of Georgia, and both at Rome, Georgia, First National Bank of Rome, as corporation under the laws of United States, of Rome, Georgia, and the Bank of Jasper, a corporation under the laws of Florida, of Jasper, Florida, defendants, and thereupon your orator would respectifully show unto your Honor, as follows:

1. That on, to-wit, about the 25 day of Nov. 1911, the defendant Rome Insurance Company was a foreign corporation organized and existing under and by virtue of the laws of the State of Georgia, with its principal place of business at the City of Rome, in said State, and was then and there engaged in the Insurance business, and the defendant, American Bank and Trust Company was on the
97 date aforesaid, likewise a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its place of business at Rome, in said State of Georgia, and was engaged in the banking business and acting as trustee for those persons and corporations desiring its service as trustee.

2. That on, to-wit, about the 25 day of Nov. 1911, the said defendant Rome Insurance Company was desirous of offering for sale and selling shares of the capital stock, and in order to effectuate its desire and purpose in that respect it caused to be named as its trustee for such purpose, its co-defendant, the said American Bank and Trust Company, of Rome, Georgia, and authorized the said trustee to offer for sale and sell to persons desiring the same, shares of the capital stock of the said Rome Insurance Company, and which said shares were to be fully paid and non-assessible, and of the par value of ten dollars ($10.00) per share, but to be sold by the said trustee at the sum of thirty dollars ($30.00) per share, or on the ratio of Three Dollars ($3.00) to be paid for each One Dollar ($1.00) par value of stock; and the said Rome Insurance Company and the American Bank and Trust Company in order to effectuate the sale of the capital stock of said Rome Insurance Company, sent their agent or representative into Hamilton County, Florida, where your orator resided and still resides, and certificates of shares in the capital stock of the said Rome Insurance Company.

3. And your orator further alleges that the said Rome Insurance Company and the American Bank and Trust Company of Rome, Georgia, by and through their said agent or representative then and there, to-wit, about the 25 day of Nov., 1911, and in Hamilton County, Florida, approached your orator and opened up negotiations with him for the purpose of inducing your orator to purchase shares of the capital stock of the Rome Insurance Company, and
98 then and there falsely and fraudulently and with the intent and purpose to deceive and defraud your orator, represented to your orator, that the shares of the capital stock in the said Rome Insurance Company so offered for sale by the said Rome Insurance Company and the American Bank and Trust Company, as Trustee, was of great value, to-wit: of the value of Three Dollars ($3.00) for each One Dollar ($1.00) of said capital stock, that your orator was then and there wholly ignorant and uninformed as to the value of said stock, of which ignorance and lack of information the said Rome Insurance Company and American Bank and Trust Company, trustee, knew or ought to have known, and your orator was wholly dependent upon said Insurance Company and its trustee for information with respect to said capital stock, and he believed and relied upon the statements and representations so made to him, as aforesaid, with respect to the value of said stock; that the said Insurance Company, and its said trustee, further falsely and fraudulently and with the intention and purpose to deceive and defraud your orator, then and there represented to him that the said Rome Insurance Company was a solvent corporation and possessed of assets in value far in excess of its liabilities, and your orator relied upon and placed confidence in said false representations; and your orator charges that all of said representations aforesaid, so made to him by the said Insurance Company and its trustee, were then and there wholly false and untrue, and the said Insurance Company and its said trustee well knew the same to be false and untrue, and intended

by said false and fraudulent representations to deceive and defraud your ora-or, and did deceive and defraud him, and by means thereof your orator was induced to purchase and agree to pay for and did purchase and agree to pay for, in reliance upon such false and fraudulent representations 10 shares of the capital stock of said Rome Insurance Company, on the basis of Three Dollars ($3.00)
99 to be paid for each One Dollar (1.00) face value of said capital stock and amounting in the aggregate to the sum of 300 dollars so agreed to be paid for by your orator for such capital stock. And your orator further alleges that certificates of shares in capital stock of the said Rome Insurance Company were issued to your orator, and your orator alleges that said capital stock so sold to him was then and there wholly without value and was not then and there worth Three Dollars ($3.00) or any other sum, for each one dollar (1.00) of the face value thereof, and the said Rome Insurance Company was at that time hopelessly involved and embarassed financially and was then wholly insolvent, although your orator was not at that time aware of the worthlessness of the capital stock of the Rome Insurance Company, or aware of its insolvency; that both the said Rome Insurance Company and its said trustee, then knew, or ought to have known that the capital stock of said Insurance Company was worthless and the said company practically insolvent.

4. And your orator further alleges that by an agreement entered into between your orator and American Bank and Trust Company, as trustee, for the said Rome Insurance Company and its co-defendant, the said Bank of Jasper, it was then and there to-wit: about the 25 day of Nov., 1911, and in Hamilton County, Florida, agreed that your orator as consideration to be paid for said shares of the capital stock of the Rome Insurance Company, should execute a note payable to orator's order, for the sum of 300 dollars, and deposit the same in the said Bank of Jasper, which said Bank was to discount said note and issue a certificate of deposit for the proceeds thereof, and said certificate of deposit to be turned over to the American Bank and Trust Company of Rome, Georgia, as such trustee, and payable at future date; that in pursuance of the said tri-partite agreement, your orator executed said note and the American Bank and Trust Com-
100 pany and your orator procured a certificate of deposit to be issued for the proceeds thereof, and which proceeds were included in certificate No. 319 of said bank, dated at Jasper, Florida, on the 25 day of November, 1911, and wherein it was certified by W. S. Murrow as Cashier of the said Bank of Jasper, that said American Bank and Trust Company, as trustee, had deposited in said bank $1,558.20 *dollars*, payable to the order of itself on return of said certificate properly indorsed, with interest at four percent per annum, compounded quarterly, and said certificate payable on or after November 25, 1912; that said certificate was delivered by said Bank of Jasper to the agent of Rome Insurance Company and American Bank and Trust Company. Your orator further alleges that the negotiations and agreement with him for the purchase of said shares in the capital stock in the Rome Insurance Company, and the method

by which the same should be paid for, including the execution of said note by your orator and the issuance of a certificate of deposit by the said Bank of Jasper, were all discussed and agreed upon by your orator, American Bank and Trust Company, as trustee, aforesaid, and the said Bank of Jasper, Florida, in advance of and at the time of said purchase, and the same were contemporaneous and formed but one act and agreement.

5. And your orator would further allege that the note executed by him and referred to in the preceding paragraph is now in the hands of the said Bank of Jasper, Florida, and the certificate of deposit is in the hands of First National Bank of Rome, by virtue of a pretended assignment and transfer thereof, yet the said note is outstanding in the hands of the said bank, and the bank has refused to deliver the same to your orator for cancellation; and your orator alleges that the proceeds of said note, to-wit, the sum of $..... is now in the custody of the said Bank of Jasper, in its banking house at Jasper,
101 Hamilton County, Florida, and has so remained in the custody of said bank since it was deposited therein, and the defendant First National Bank of Rome has demanded and is now demanding of said bank that it pay over the same to the said defendant, and has claimed and is now claiming and asserting the right thereto, and has claimed and is now claiming that the said proceeds so deposited aforesaid, belongs to said defendant, and orator fears and believes that if said proceeds are paid over to said defendant, they will be removed beyond the jurisdiction of said Court and out of the State of Florida; that by reason of the false and fraudulent representations so made to your orator by the Rome Insurance Company, and the American Bank and Trust Company, trustee, through their agent and representative, mention whereof is made in the third paragraph of this bill, the purchase of said shares of stock in the said Rome Insurance Company by your orator and the agreement therefor, is and ought to be decreed of no force and effect as having been procured by the fraud, deceit, covin and guile of the said Insurance Company and its trustee, American Bank and Trust Company, and the note of your orator now held by the said Bank of Jasper, is and ought to be decreed to be wholly void and of no effect, and the same should be delivered up to your orator, and your orator further alleges that under the circumstances disclosed by the allegations of this bill, the proceeds of said note in the hands of the said Bank of Jasper, defendant, as aforesaid, should be decreed not to belong to the holder of said certificate of deposit, on account of the said deposit having been induced and procured to be made by the false and fraudulent representations of the said Rome Insurance Company, and American Bank and Trust Company as herein set forth and alleged, and in the event that the note executed by your orator and now in the hands of the said Bank of Jasper, defendant, should not be held void, under Chapter 5717 of the laws of Florida, then
102 the funds now in the hands of the defendant, Bank of Jasper, as the proceeds of said note, should be decreed to be impressed with a trust in favor of your orator and to belong to him.

6. And your orator would further allege that the pretended contract for the sale and purchase of the said shares of stock in the said Rome Insurance Company, with your orator, made by or on behalf of the said Rome Insurance Company and the said American Bank and Trust Company is and ought to be decreed to be void, because your orator alleges the truth to be that the said Rome Insurance Company and the said American Bank and Trust Company were and each of them was, at the time of making the aforesaid contract with your orator and the execution of said note and the certificate of deposit, a foreign corporation and organized by and under the laws of the State of Georgia, and by virtue of Section 1, of chapter 5717 of the laws of Florida, neither of said corporations were authorized to transact business or to acquire hold or dispose of property in the State of Florida, until it shall have filed in the office of the Secretary of State, a duly authenticated copy of its charter or articles of incorporation, and shall have received from said Secretary of State a permit to transact business in Florida, and your orator alleges that at the time of the making of the pretended contract of sale and purchase of shares of the capital stock of the said Rome Insurance Company by your orator as hereinbefore alleged, and at the time of the execution of said note and the issuance of said certificate of deposit; neither the said Rome Insurance Company, or the said American Bank and Trust Company, had filed in the office of the Secretary of State a duly authenticated copy of its charter or articles of incorporation nor had they or either of them received from the Secretary of State a permit to transact business in this State.

7. And your orator alleges that he is ready, willing and able
103 and hereby offers to surrender to the said Rome Insurance Company, or its trustee, the American Bank and Trust Company, the certificates of shares of stock issued to him and stands ready and offers to comply with such order and decree of your Honor with respect to the surrender of said certificates as may be entered in this suit.

Inasmuch as your orator is without adequate remedy except in equity, he prays as follows:

(*a*) That your Honor take jurisdiction of the parties and subject matter of this bill, and grant to your orator the relief hereinafter prayed.

(*b*) That the certificate of deposit, insofar as the same covers and includes the proceeds derived from the note executed by your orator, as hereinbefore alleged, and which certificate was issued by the Bank of Jasper, Florida, to the American Bank and Trust Company of Rome, Georgia, as Trustee, dated 25 day of November, 1911, and for the total sum of $1,558.20 dollars be decreed to be void, and,

(*c*) That the note executed by your orator payable to his order for the sum of 300 dollars, dated 25 day of Nov., 1911, and delivered to the Bank of Jasper, Florida, be decreed to be void, and of no

effect, and the said bank be required to cancel and surrender the same to your orator.

(*d*) That the pretended contract of agreement made by your orator with the said Rome Insurance Company and the American Bank and Trust Company, its trustee, providing for the sale and purchase of 10 shares of the capital stock of the said Rome Insurance Company, be decreed to be wholly void, and of no effect.

(*e*) That the American Bank and Trust Company, Trustee, as aforesaid and the Rome Insurance Company, and each of
104 them, be enjoined and restrained by order of this Court from instituting any suit against your orator on account of the said pretended contract of sale and purchase of shares of stock in the Rome Insurance Company.

(*f*) That the Bank of Jasper, Florida, be restrained by order of this Court from instituting any suit or action to recover on account of the said note executed by your orator, dated 25 day of Nov., 1911, and now held by the said Bank of Jasper, Florida.

(*g*) That the said Bank of Jasper, defendant, be restrained and enjoined from paying out of the proceeds of the note executed by your orator dated 25 day of Nov., 1911, to the defendant, First National Bank of Rome, or anyone for it, and that the defendant, First National Bank of Rome, be restrained and enjoined from withdrawing the said proceeds or any part thereof from the said Bank of Jasper and that said First National Bank of Rome be decreed not to have any right or interest in said proceeds or any part thereof.

(*h*) That in the event the note so executed by your orator shall be held to have been void by virtue of Chapter 5717 of the laws of Florida then that the proceeds arising therefrom be decreed to be impressed with a trust in favor of your orator and to belong to him and the Bank of Jasper be required to pay the same over to your orator.

(*i*) That the said injunction hereinbefore prayed for be made preliminarily and temporary until the further order of the Court and upon final hearing that the same may be made perpetual.

(*j*) That your orator have such other, further and general relief in the premises as the equities of his case may require and to your Honor may seem meet and proper.

105 And may it please your Honor to grant unto your orator the State's writ of subpœna in Chancery, issuing out of and under the seal of this Court, and directed to the said defendants, Rome Insurance Company, a corporation of Rome, Georgia; American Bank and Trust Company, a corporation of Rome, Georgia; First National Bank of Rome, a corporation of Rome, Georgia, and the Bank of Jasper, a corporation of Jasper, Florida, directing and commanding them and each of them to be and appear before this

Honorable Court at a time and place to be therein designated and under a certain penalty to be herein stipulated, then and there true, perfect and complete answer make (but not under oath, the oath to said answers being hereby specifically waived) to all and singular the allegations in this bill contained, and to stand to abide by and perform the orders and decree of your Honor in the premises.

S. S. SANDFORD,
CARTER & McCOLLUM,
Of Counsel & Sols. for Complt.

STATE OF FLORIDA.
County of ——, *ss:*

Before me personally appeared B. F. Carter, who being *fully* sworn, deposes and says that affiant is the complainant in the above entitled cause and has read the foregoing bill and knows the contents thereof, and that the same is true.

B. F. CARTER.

Sworn to and subscribed before me this 24th day of March, A. D. 1913.

[SEAL.]

M. P. HUNTER,
Clerk of Circuit Court.

106 On the 3rd day of April, 1913, defendants filed special appearance and motion to quash service under amended bill, which in words and figures is as follows:

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Comes now defendants, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay & Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service, and to vacate and hold said pretended and attempted service, by publication upon these defendants to be for naught, upon the following grounds, to wit:

1st. Because on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as it required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida.

107 3rd. Because this is an action in personam, and said defendants have not received personal service of process herein in the State of Florida.

4th. Because as appears upon the face of the record, in this cause, legal service of process has not been had upon the said defendants.

And these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the Purpose of This Motion, and Limiting the Same to said Purposes.

On the 5th day of April, 1913, the Court made an order overruling motion of defendants, under the amended bill, to quash the service, which order is as follows:

Motion to Quash.

In Circuit Court in and for Hamilton County, Florida, in Chancery Sitting.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

This cause came on to be heard on this day upon motion of defendants herein to quash service and was argued by counsel for complainants and defendants, and the Court being advised in the prem-
108 ises, it is upon consideration, ordered and adjudged that said motion to quash service be and same is hereby overruled, and defendants allowed thirty days from this date in which to plead, answer or demur as they may be advised, and complainants allowed ten days thereafter in which to reply as he may be advised.

Done, ordered in vacation at Jasper, Florida, this 3rd day of April, A. D. 1913.

M. F. HORNE,
Judge.

Duly recorded in Circuit Court Minute Docket No. 11, page 139, this April 5th, 1913.

[SEAL.] M. P. HUNTER,
Clerk,
By G. S. FRINK,
D. C.

On the 10th day of April, 1913, entry of appeal was filed, which said entry is as follows:

Entry of Appeal.

In the Circuit Court, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Come now defendants, Rome Insurance Company, American Bank & Trust Company, trustee and the First National Bank of Rome, Georgia, by Kay & Doggett, their solicitors and counsel, and not appearing generally but appearing specially, solely and only and limiting the appearing to what in contemplation of law, amounts only and solely to a special appearance, enter their appeal to the Supreme Court of Florida, from the order and decree of the Circuit
169 Court of Hamilton County, Florida, in Chancery, made and entered on the 14th day of March, A. D. 1913, overruling the motion of the said defendants, filed under the original bill of complaint herein, to quash the pretended service by publication attempted to be had herein on the said defendants, the said defendants having appeared specially in the said Circuit Court of Hamilton County under complainant's original bill herein, solely and only for the purpose of moving the Court to quash and set aside the said attempted and pretended service.

And the said defendants not appearing generally but appearing specially, as aforesaid, enter their further appeal to the Supreme Court of Florida from a second order and decree of said Circuit Court of Hamilton County, Florida, in chancery, made and entered on the 3rd day of April, A. D. 1913, overruling the motion of the said defendants filed under the amended bill of complaint herein to quash the pretended service by publication attempted to be had herein on the said defendants, the said defendants having appeared specially

in the said Circuit Court of Hamilton County, under complainant's amended bill herein, solely and only for the purpose of moving the Court to quash and set aside the said attempted and pretended service. And the said appeals are made returnable to the second Tuesday of June, A. D. 1913, the same being the tenth day of the said month.

Notice is hereby given to the complainant, B. F. Carter, of the taking and entry of the said appeals, and the Clerk of the said Circuit Court is hereby directed to forthwith enter and record this entry and motion of appeal in the chancery order book of the said Circuit Court as provided by law.

KAY & DOGGETT
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the
Purpose of Appealing from said Order.

110 Duly recorded in Chancery Order Book No. 3, page 249, this 10th day of April, A. D. 1913.

[SEAL.] M. P. HUNTER,
Clerk,
By G. S. FRINK,
D. C.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

Application for Supersedeas.

Come now the defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay & Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance, apply to the said Court for an order granting and fixing the terms of a supersedeas on the appeal of said defendants heretofore entered and recorded in said cause, on the 10th day of April, A. D. 1913.

And further that said order shall operate as of and from the said date of said entry of appeal.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the
Purpose of said Appeal.

111 In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

Notice to Solicitors for Complainant of Application for Supersedeas.

To Messrs. S. S. Sandford and Carter & McCollum, solicitors for complainant herein:

You will please take notice that on the 19th day of April, A. D. 1913, or as soon thereafter as Counsel can be heard, we shall apply to the Honorable M. F. Horne, Judge of said Court, at his office in Jasper, Florida, for an order granting the foregoing application for a supersedeas.

KAY & DOGGETT,
Attorneys and Solicitors for Defendants Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank, Rome, Georgia, Appearing Only and Solely for the Purpose of This Appeal.

We, S. S. Sandford, and Carter & McCollum, Solicitors for the above named Complainant, do hereby acknowledge the receipt of a copy of the foregoing application of notice this the 12th day of April, A. D. 1913. We agree that this notice shall in no sense operate as a general appearance in the above cause.

S. S. SANDFORD,
CARTER & McCOLLUM,
Solicitors for Complainant.

112 *Order Granting Supersedeas.*

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

This cause coming on to be heard upon the foregoing application of the defendant, Rome Insurance Company, American Bank & Trust

Company, trustee, and First National Bank of Rome, Georgia, for an order granting and fixing the terms of a supersedeas on appeal:

And the Court having duly inspected the record herein and it appearing that the said defendants have taken and entered their appeal to the Supreme Court of Florida, from an order and decree of this Court made on the 14th day of March, 1913, overruling the said defendant's motion to quash service under the original bill herein filed; that the said defendants have taken and entered their further appeal from an order and decree of this Court made on the 3rd day of April, 1913, overruling the said defendants' motion to quash service under the amended bill herein filed, that these said appeals are made returnable to a day more than thirty and not less than ninety days from the date of the recording of the said appeals, to-wit: the second Tuesday of June, A. D. 1913, the same being the tenth day of said month.

It is therefore ordered, adjudged and decreed that the said appeals operate as a supersedeas as of and from the said 19th day of April, 1913, and that all proceedings herein be stayed pending said appeals and until the final disposition thereof upon the giving by the said defendants of a bond in terms as provided by law, payable to the complainant, B. F. Carter, to be approved by the Clerk of the
113 Circuit Court, in the sum of $250.00, conditioned to pay all of the costs which may be occasioned by the entry and prosecution of said appeals if said decree of the said Circuit Court shall be affirmed by the said Supreme Court.

Done and ordered and decreed this 19th day of April, A. D. 1913.

M. F. HORNE,
Judge.

Duly recorded in Circuit Court Minute Book No. 11, page 139, this April 19th, 1913.

[SEAL.]

M. P. HUNTER,
Clerk.

By G. S. FRINK,
D. C.

On the 3rd day of May, 1913, the defendants filed their Supersedeas Bond, which, with the approval thereof by the Clerk, is in words and figures as follows:

Supersedeas Bond.

In the Circuit Court of Florida, Third Judicial Circuit, in and f
Hamilton County.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

Know all men by these presents that we, Rome Insurance Co
pany, a corporation, American Bank and Trust Company, a corpo
tion, Trustee, and the First National Bank of Rome, Georgia, a co
poration, as Principals and the American Surety Company of N
York, a corporation, as Surety, are held and firmly bound unto B F
Carter, his executors, administrators and assigns, in the sum of T
Hundred and fifty dollars ($250.00) lawful money of t
114 United States of America, for the payment whereof well a
truly to be made, we bind ourselves and our assigns, joint
and severally, firmly by these presents, this bond being a supersed
bond on a special appeal from two orders of the said Circuit Co
overruling two motions of the defendants, Rome Insurance Co
pany, American Bank & Trust Company, Trustee, and the Fi
National Bank of Rome, Georgia, to quash the service by publicat
herein attempted to be had upon them, the said motions being ma
under a special appearance and the said defendants not having
peared generally in the said Circuit Court, but only specially for
purpose of making said motion, and this bond is limited to such
supersedeas bond, solely and only for the purpose of the said app
and is in no way to constitute a general appearance in the cause
any of the said defendants.

Signed and sealed by the said Rome Insurance Company, a co
poration, American Bank & Trust Company, a corporation, Trust
and the First National Bank of Rome, Georgia, a corporation, b
their respectively duly authorized officers, on this the 29th day
April, A. D. 1913, at Rome, Georgia, and by the said Americ
Surety Company of New York, by W. E. Kay, its Resident Vi
President, duly authorized to execute this bond at Jacksonvil
Florida, on this 2nd day of May, A. D. 1913.

The condition of this obligation is such that whereas the said d
fendants in the above entitled cause have taken and entered the
special appeal to the Supreme Court of Florida, from an order a
decree of the said Circuit Court in chancery, made and entered
the 14th day of March, 1913, overruling the motion of the said d
fendants filed under the original bill of complaint herein to qu
the pretended service by publication attempted to be had on the s
defendants; and whereas the said defendants have taken and ent
their further special appeal from a second order and decree of the s

Circuit Court in chancery, made and entered on the 3rd day
115 of April, 1913, overruling the motion of the said defendants filed under the amended bill of complaint herein to quash the pretended service by publication attempted to be had herein on the said defendants, both of the said special appeals having been made returnable to the second Tuesday of June, A. D. 1913, same being the tenth day of the said month, and whereas by a further order and decree of the said Circuit Court it was ordered that the said special appeals operate as a supersedeas, and that all proceedings in said suit be stayed until final disposition thereof upon the defendants giving bond payable to the said complainant in the sum of Two Hundred and Fifty Dollars ($250.00) conditioned to pay all costs which may be occasioned by the entry and prosecution of said special appeals, if said decree shall be affirmed by said Supreme Court.

Now, therefore, if the said defendants shall pay or cause to be paid all costs which may be occasioned by the entry and prosecution of said special appeals, if the said decrees appealed from shall be affirmed by said Supreme Court, then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] ROME INSURANCE CO.,
By J. C. PORTER,
Vice-Pres.
FIRST NATIONAL BANK,
By B. F. HUGHES,
Pres.
AMERICAN BANK & TRUST CO.,
Trustee, NOW
STATE BANK OF ROME,
By J. H. O'NEILL,
1st V. P.
[SEAL.] AMERICAN SURETY COMPANY,
By W. E. KAY,
Residing Vice-President.

Attest:
[SEAL.] J. R. SEAL,
Secretary Rome Ins. Co.

Attest:
W. M. STOCKTON,
Resident Assistant Secretary.

116 Taken and approved by me this 3rd day of May, 1913.
M. P. HUNTER,
[SEAL.] *Clerk of said Court.*

On the 28th day of April, 1913, assignment of errors, with service of copy on opposing counsel, was filed, which is in words and figures, as follows:

Assignment of Errors.

On the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

Come now the defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay & Doggett, their solicitors and counsel, and not appearing generally, but appearing specially, solely and only, and limiting their appearance to what, in contemplation of law, amounts only and solely to a special appearance, and at the time of filing their directions to the Clerk for making up a transcript herein, assign the following errors, upon which they intend to rely for a reversal by the Supreme Court of the State of Florida of the orders and decrees herein appealed from, to-wit:

First. That the Court erred in overruling the motion of the defendants herein, Rome Insurance Company, American Bank & Trust Company, Trustee, and the First National Bank of Rome, Georgia, filed under the original bill herein to quash service by publication attempted to be had upon said defendants.

117 Second. That the Court erred in overruling the motion of the defendants, Rome Insurance Company, American Bank and Trust Company, Trustee, and the First Nationad Bank of Rome, Georgia, filed under the amended bill herein to quash service by publication attempted to be had upon the said defendants.

KAY & DOGGETT,
Attorneys and Solicitors for said Defendants, Appearing Only Specially for the Purpose of said Appeal.

Copy of foregoing assignment of errors received and service thereof accepted, this 26th day of April, 1913.

S. S. SANDFORD,
CARTER & McCOLLUM,
Solicitors for Complainant.

On the 28th day of April, 1913, written direction to the Clerk for making up the transcript of record, with service of copy to opposing counsel, was filed which is in words and figures as follows:

Directions to Clerk.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

Comes now the defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay & Doggett, their Solicitors and Counsel, and not appearing generally but appearing specially, solely and only and limiting their appearance to what in contemplation of law,
118 amounts only and solely to a special appearance, and hereby direct the Clerk of the aforesaid Court to commence the making up of the transcript of record in the above case on the 14th day of May, A. D. 1913, and in the making of said transcript, the said Clerk will be governed by the following direction-, and instruction-, to-wit:

1st. Recite the filing of the original bill, January 3rd, 1913.

2nd. Copy the original Bill of Complaint, filed January 3rd, 1913.

3rd. Recite the filing of the affidavit of B. F. Carter, January 3rd, 1913.

4th. Copy the affidavit of B. F. Carter, filed January 3rd, 1913.

5th. Recite the issuing of the order of publication on the aforesaid defendants, January 3rd, 1913.

6th. Copy order of publication on the said defendants issued January 3rd, 1913.

7th. Recite the filing of the special appearance and motion to quash by the aforesaid defendants, February 20th, 1913.

8th. Copy special appearance and motion to quash, filed February 20, 1913.

9th. Recite the filing of affidavit of publication, February 25th, 1913.

10th. Recite the filing of the certificate of the Clerk February 25th, 1913, that the order of publication was made.

119 11th. Recite the filing of the order of the Court allowing the complainants to file the amended bill, overruling motion of aforesaid defendants under the original bill to quash service at-

tempted to be had upon them by publication, the said order being filed March 14th, 1913.

12th. Copy the said order of the Court filed March 14th, 1913.

13th. Recite the filing of the amended bill, March 24, 1913.

14. Copy the amended bill filed March 24, 1913.

15. Recite the filing of the motion to squash service under the amended bill by the defendants aforesaid under special appearance filed April 3rd, 1913.

16th. Copy the said special appearance and motion to quash under the amended bill filed April 3rd, 1913.

17th. Recite the filing of the order of the Court, overruling the motion of the said defendants under the amended bill to quash service attempted to be had upon them, the said order being filed April 5th, 1913.

18th. Copy the said order of the Court filed April 5th, 1913.

19th. Recite the filing of the entry of appeal, April 10th, 1913.

20th. Copy the entry of appeal filed April 10th, 1913, the certificate showing record of the same in accordance with the law.

21st. Copy the application for order of supersedeas, notice of such application, the acknowledgment of such notice, and the order granting and fixing the terms of supersedeas.

120 22nd. Recite the filing of and copy supersedeas bond, and the order approving same.

23rd. Recite the filing of and copy assignment of errors, and service of copy on opposing counsel.

24th. Recite the filing of and copy directions to the Clerk for the preparation of the transcript and service of copy to opposing counsel.

25th. Certify as to the correctness of the transcript in accordance with law.

26th. Omit all other papers.

KAY & DOGGETT,
Attorneys and Solicitors for said Defendants,
Appearing Only Specially for the Purpose of This Appeal.

Copy of the foregoing directions to the Clerk, received on this 26 day of April, A. D. 1913.

S. S. SANDFORD,
CARTER & McCOLLUM,
Solicitors for Complainants.

STATE OF FLORIDA,
Hamilton County:

I, Melvin P. Hunter, Clerk of the Circuit Court of the Third Judicial Circuit, in and for Hamilton County, Florida, do hereby certify that the foregoing pages numbered from one to thirty-seven inclusive, contain a correct transcript of the record of the order of the said Court entered the 14th day of March, A. D. 1913 overruling the motion to quash service attempted to be had upon the defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and the First National Bank of Rome, Georgia, filed under the original bill of complaint, and a correct transcript of the record of the order of the said Court entered the 3rd day of April, A. D.
121 1913, overruling the motion to squash service attempted to be had upon the defendants, Rome Insurance Company, American Bank & Trust Company, Trustee and the First National Bank of Rome, Georgia, filed under the amended bill of complaint, these orders and this transcript of record being those of the cause in Chancery of B. F. Carter, complainant, against the Rome Insurance Company, et al., defendants, and this transcript being a true and correct recital and copy of all such papers and proceedings in such cause as appears upon the records and files in my office that have been directed to be included in said transcript by the written demands of said parties.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Circuit Court, this 2nd day of May, A. D. 1913.

[SEAL.] MELVIN P. HUNTER,
Clerk of the Circuit Court in and for
Hamilton County, Florida.

In the Supreme Court of Florida, June Term, A. D. 1913.

ROME INSURANCE COMPANY, a Georgia Corporation, and Others,
Appellants,

vs.

B. F. CARTER, Appellants.

HAMILTON COUNTY:

Per Curiam:

This case cannot be distinguished from that of Rome Insurance Co., vs. J. H. Corbett, this day decided, and upon the opinion therein, the order herein appealed from is affirmed.

All concur.

"Exhibit E."

122 In the Supreme Court of Florida, June Term, A. D. 1913.

ROME INSURANCE COMPANY, a Georgia Corporation, and Others, Appellants,

vs.

J. H. CORBETT, Appellee.

Hamilton County.

COCKRELL, *J.:*

A bill was filed in the Circuit Court for Hamilton County against local defendants and also certain non-resident corporations, seeking to impound a fund in that county arising out of an alleged fraudulent transaction consummated in that county, constructive service, in perfect accordance with the statute, was had by publication, and the non-resident corporation appeared specially to quash the service upon the theory that the sole relief prayed was in personam, and that therefore the statute authorizing constructive service by publication does not apply. This motion having been denied these non-residents have sued out what they term a special appeal.

It may well be that this appeal so operates as a general appearance in the Circuit Court, as to render the question before us a moot one, but the appellee does not ask us to so hold, and it appears that his is but a test case, upon the decision of which many other cases in that Court are depending.

The bill confines its prayers to an adjudication of the fund sought to be impounded, and does not pray for a general personal decree against these non-residents, and we are not to assume upon the face of the bill that the Circuit Court will enter an unauthorized decree; and we have not before us any such question of jurisdiction as was involved in the case of Pennoyer vs. Neff, 95 U. S. 714.

123 The purpose of the statute authorizing constructive service by publications to notify non-residents of the pending suit so that they may if they care to do so, come onto the case, and if the statute be followed, there is no right in the non-resident to quash this notice; he has his right if not waived, to object should the Court thereafter commit an error against him.

Our constructive service statute is broad enough to apply to any suit in equity pending in our Circuit Courts, and as — been said in Kilpatrick vs. Post, 53 N. J. Eq. 591, 32 Atl. Rep. 267, cannot be confined in its operation to the cases where the Court might make final decree or judgment. Further that Court says, "It was not intended that the question of the power to enter the ultimate decree or judgment should enter into the question of the right to give notice of the suit to a non-resident, or that this question of jurisdiction should be settled on a motion to discharge the order of publication. The complainant is entitled to have the question of jurisdiction settled by a final decree,"

We are not to be understood as holding that the Court might not quash a service by publication, if the bill upon its face showed that it was clearly a common law of action, and that the resort to the equity side of the Court was a subterfuge; the bill before us does not present that case.

The order is affirmed.

Shackleford, C. J., and Taylor, Hocker and Whitfield, JJ., Concur.

"Exhibit F."

124 *Mandate from the Supreme Court.*

THE STATE OF FLORIDA:

To the Honorable the Judge of the Circuit Court for the Third Judicial Circuit of Florida, Greeting:

Whereas, Lately in and for the circuit Court of the third Judicial Circuit of Florida, in and for the county of Hamilton, in a cause wherein B. F. Carter was complainant, and Rome Insurance Company, a corporation, American Bank & Trust Company, a Corporation, First National Bank of Rome, Georgia, a Corporation, and Bank of Jasper, a Corporation, were defendants, the Order of said Circuit Court was rendered April 15th, 1913 as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the State of Florida; by virtue of an appeal agreeably to the Laws of said State in such case made and provided, fully and at large appears;

And whereas, at the June Term of said Supreme Court holden at Tallahassee, A. D. 1913, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel; in consideration whereof, on the 9th day of December, A. D. 1913, it was considered by said Supreme Court that the said order of the Circuit Court be and the same is hereby affirmed; it is further ordered that the appellee do have and recover of and from the appellants his costs by him in this behalf expended, which costs are taxed at the sum of —; therefore,

You are hereby commanded, that such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had.

Witness the Honorable Thomas M. Shackleford Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 10th day of January, 1914.

January 10, 1914.

125 Original mailed to Clerk, Circuit Court for Hamilton, Fla.

[SEAL.]

N. H. MABRY,
Clerk Supreme Court of Florida.

"Exhibit G."

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

A. L. WISE, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

Comes now defendants, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service upon the following grounds, to-wit:

1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not
126 resident in Florida, and have not received personal service of process herein in the State of Florida, and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught; and these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the Purpose of This Motion, and Limiting the Same to Said Purpose.

"Exhibit H."

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

A. L. WISE, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

Comes now defendants, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contem-
127 plation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service, and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught, upon the following grounds, to-wit:

1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida.

3rd. Because this is an action in personam, and said defendants have not received personal service of process herein in the State of Florida.

4th. Because as appears upon the face of the record in this cause, legal service of process has not been had upon the said defendants.

And these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, on answer hereto, because of the many defects in said pretended service by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to Said Purpose.

"Exhibit J."

128 *Stipulation of Counsel.*

In the Circuit Court, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

A. L. WISE

vs.

ROME INSURANCE COMPANY et al.

It is hereby stipulated and agreed by and between S. S. Sandford and Carter & McCullom, Solicitors for the complainant herein, and Kay & Doggett, who have not appeared generally, but who have appeared only specially as Solicitors for the defendants herein, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, Georgia, and who are making this agreement specially, solely for the purposes herein expressed.

That proceedings in this cause be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of the said defendants to quash service in the case of B. F. Carter vs. Rome Insurance Company, et al., which said case is now on file and being prosecuted in this Court;

That the ultimate decision of the said appeal in the said case of B. F. Carter vs. Rome Insurance Company shall be decisive of the validity of the service by publication on the said defendants in this case, and if the service in the said Carter case be ultimately held defective and ordered quashed, then the service in this case, the validity of which involves identically the same legal questions as that in the Carter case shall be held defective, and shall be quashed; and

That this stipulation of Counsel shall not be considered as constituting a general appearance of the said defendants in this cause;

129 This agreement being signed and entered into this 10th day of April, A. D. 1913.

____ ____.

____ ____.

Solicitors for Complainant.

____ ____.

Solicitors for Defendants Rome Insurance Co., American Bank & Trust Co., and First National Bank of Rome, Ga., Who Have Appeared Only Specially in said Cause.

"Exhibit K."

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

J. B. WETHERTON, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

Come now defendants, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service upon the following grounds, to-wit:

130 1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida.

and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught; and these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys and Solicitors, Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to said Purpose.

"Exhibit L."

131 In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

J. B. WETHERINGTON, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

Come now defendants, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service, and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught, upon the following grounds, to-wit:

1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida.

3rd. Because this is an action in personam, and said defendants have not received personal service of process herein in the State of Florida.

132 4th. Because as appears upon the face of the record in this cause, legal service of process has not been had upon the said defendants.

And these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,

Attorneys and Solicitors, Appearing Specially, Solely, and Only for the Purpose of this Motion and Limiting the Same to said Purposes.

"Exhibit M."

Stipulation of Counsel.

In the Circuit Court, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

J. B. WETHERINGTON

vs.

ROME INSURANCE COMPANY et al.

It is hereby stipulated and agreed by and between S. S. Sandford and Carter & McCollum, Solicitors for the complainant herein, and Kay & Doggett, who have not appeared generally, but who have appeared only specially as Solicitors of the defendants herein, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, Georgia, and who are makig this
133 agreement specially, solely for the purposes herein expressed:

That proceedings in this cause be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of the said defendants to quash service in the case of B. F. Carter vs. Rome Insurance Company et al., which said cause is now on file and being prosecuted in this Court;

That the ultimate decision of the said appeal in the said case of B. F. Carter vs. Rome Insurance Company shall be decisive of the validity of the service by publication on the said defendants in this case, and if the service in the said Carter case be ultimately held defective and ordered quashed, then the service in this case, the validity of which involves identically the same legal questions as that in the Carter case shall be held defective, and shall be quashed; and

That this stipulation of Counsel shall not be considered as constituting a general appearance of the said defendants in this cause;

This agreement being signed and entered into this 10th day of April, A. D. 1913.

____ ____,

____ ____,

Solicitors for Complainant.

____ ____,

Solicitors for Defendants Rome Insurance Co., American Bank & Trust Co., and First National Bank of Rome, Ga., Who Have Appeared Only Specially in said Cause.

"Exhibit N."

134 In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

W. M. O'CAIN, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

Comes now defendants, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service upon the following grounds, to-wit:

1. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida.

and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught; and these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which
135 no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they waived due service of process upon them, nor have they voluntarily appeared herein.

KAY & DOGGETT,
Attorneys and Solicitors, Appearing Specially, Solely, and Only for the Purpose of This Motion, and Limiting the Same to said Purpose.

"Exhibit P."

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

W. M. O'CAIN, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

Come now Defendants, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service, and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught, upon the following grounds, to-wit:

136 1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida.

3rd. Because this is an action in personam, and said defendants have not received personal service of process herein in the State of Florida.

4th. Because as appears upon the face of the record in this cause, legal service of process has not been had upon the said defendants.

And these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,

Attorneys and Solicitors, Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to said Purposes.

"Exhibit Q."

137 *Stipulation of Counsel.*

In the Circuit Court, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

W. M. O'CAIN

vs.

ROME INSURANCE COMPANY et al.

It is hereby stipulated and agreed by and between S. S. Sandford and Carter & McCollum, Solicitors for the complainant herein, and Kay & Doggett, who have not appeared generally, but who have appeared only specially as Solicitors for the defendants herein, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, Georgia, and who are making this agreement specially, solely for the purposes herein expressed:

That proceedings in this cause be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of the said defendants to quash service in the case of B. F. Carter vs. Rome Insurance Company, et al., which said case is now on file and being prosecuted in this Court;

That the ultimate decision of the said appeal in the said case of B. F. Carter vs. Rome Insurance Company shall be decisive of the validity of the service by publication on the said defendants in this case, and if the service in the said Carter case be ultimately held defective and ordered quashed, then the service in this case, the validity of which involves identically the same legal questions as that in this case shall be held defective, and shall be quashed; and that this stipulation of Counsel shall not be considered as constituting a general appearance of the said defendants in this cause;

138 This agreement being signed and entered into this 10th day of April, A. D. 1913.

____ ____,
____ ____,
Solicitors for Complainants.

____ ____,
Solicitors for Defendants Rome Insurance Co., American Bank & Trust Co., and First National Bank of Rome, Ga., Who Have Appeared Only Specially in Said Cause.

"Exhibit R."

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

J. F. THAGGARD, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

Comes now defendant-, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation
139 of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service upon the following grounds, to wit:

1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida.

and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught; and these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to said Purpose.

"Exhibit S."

140 In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

J. F. THAGGARD, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company Trustee, and First National Bank of Rome, Georgia.

Come now defendants, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service, and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught, upon the following grounds, to wit:

1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida.

3rd. Because this is an action in personam, and said defendants have not received personal service of process herein in the State of Florida.

141 4th. Because as appears upon the face of the record in this cause, legal service of process has not been had upon the said defendants.

And these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys for Solicitors,
Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to said Purposes.

Exhibit "T."

Stipulation of Counsel.

In the Circuit Court, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

J. F. THAGGARD

vs.

ROME INSURANCE COMPANY et al.

It is hereby stipulated and agreed by and between S. S. Sandford and Carter & McCollum, Solicitors for the complainant, herein, and Kay & Doggett, who have not appeared generally, but who have appeared only specially as Solicitors for the defendants herein, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, Georgia, and who are making this agreement specially, solely for the purposes herein expressed:

142 That proceedings in this cause be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of the said defendants to quash service in the case of B. F. Carter vs. Rome Insurance Company, et al., which said case is now on file and being prosecuted in this Court;

That the ultimate decision of the said appeal in the said case of B. F. Carter vs. Rome Insurance Company shall be decisive of the validity of the service by publication on the said defendants in this case, and if the service in the said Carter case be ultimately held defective and ordered quashed, then the service in this case, the validity of which involves identically the same legal questions as that in the Carter case shall be quashed; and

That this stipulation of Counsel shall not be considered as constituting a general appearance of the said defendants in this cause;

This agreement being signed and entered into this 10th day of April, A. D. 1913.

____ ____,

____ ____,

Solicitors for Complainant.

____ ____,

Solicitors for Defendants Rome Insurance Co., American Bank & Trust Co., and First National Bank of Rome, Ga., Who Have Appeared Only Specially in said Cause.

"Exhibit U."

143 In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

C. W. SMITH, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

Comes now defendant, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service upon the following grounds, to-wit:

1. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida, and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught; and these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor
144 have they waived due service of process upon them, nor have they voluntarily appeared herein.

KAY & DOGGETT,
Attorneys and Solicitors.
Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to said Purpose.

"Exhibit V."

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

C. W. SMITH, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

Come now defendants, Rome Insurance Company, American Bank and Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay and Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service, and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught, upon the following grounds, to-wit:

145 1st. Because, on account of the attempted and pretended service by publication, the Court does not require jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida.

3rd. Because this is an action in personam, and said defendants have not received personal service of process herein in the State of Florida.

4th. Because as appears upon the face of the record in this cause, legal service of process has not been had upon the said defendants.

And these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys and Solicitors, Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to said Purposes.

"Exhibit W."

146 *Stipulation of Counsel.*

In the Circuit Court, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

C. W. SMITH

vs.

ROME INSURANCE COMPANY et al.

It is hereby stipulated and agreed by and between S. S. Sandford and Carter & McCollum, Solicitors for the complainant herein, Kay & Doggett, who have not appeared generally, but who have appeared only specially as Solicitors for the defendants herein, Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, Georgia, and who are making this agreement specially, solely for the purposes herein expressed:

That proceedings in this cause be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of the said defendants to quash service in the case of B. F. Carter vs. Rome Insurance Company, et al., which said case is now on file and being prosecuted in this Court;

That the ultimate decision of the said appeal in the said case of B. F. Carter vs. Rome Insurance Company shall be decisive of the validity of the service by publication on the said defendants in this case, and if the service in the said Carter case be ultimately held defective and ordered quashed, then the service in this case, the validity of which involves identically the same legal questions as that in the Carter case shall be held defective, and shall be quashed; and

That this stipulation of Counsel shall not be considered as constituting a general appearance of the said defendants in this cause;

147 This agreement being signed and entered into this 10th day of April, A. D. 1913.

____ ____,
____ ____,
____ ____,

Solicitors for Defendants Rome Insurance Co., American Bank & Trust Co., and First National Bank of Rome, Ga., Who Have Appeared Only Specially in said Cause.

Filed June 15th, 1915.
W. L. DEVORE,
Clerk.

"Exhibit X."

Motion to Strike Replications.

In the District Court of the United States, Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff,

v.

THE BANK OF JASPER, OF JASPER, FLORIDA, Defendant.

Comes now the defendant by S. S. Sandford, and Carter & McCollum, its attorneys, and moves the Court to strike the replications, severally, filed by the Plaintiff to the additional plea of defendant to the 1st, 2nd, 3rd, 4th and 5th, counts of plaintiff's declaration, and defendant's second and third additional pleas to the fifth count of plaintiff's declaration, on the following grounds to be taken and applied, severally, to each of said replications:

148 1. Because said replication does not avoid the allegations of the plea.

2. Because said replication admits the allegations of the plea which has been held by this Court to constitute a good defense.

3. Because said replication presents no issue to be tried.

4. Because said replication sets up no matter which avoid the material allegations of the plea.

5. Because said replication presents the same matter passed upon by this Court in ruling upon plaintiff's demurrer to the plea filed August 3rd, 1914.

6. Because said replication presents wholly immaterial matter.

7. Because said replication is so framed as to prejudice, embarrass and delay the fair trial of the issue.

CARTER & McCOLLUM.
S. S. SANDFORD.

Demurrer to Replications.

In the District Court of the United States, Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff,

v.

THE BANK OF JASPER, OF JASPER, FLORIDA, Defendant.

Now comes the defendant in the above entitled cause by S. S. Sandford, and Carter & McCollum, its attorneys, and demurs,
149 to Plaintiff's replications, severally, to defendant's additional plea to the 1st, 2nd, 3rd, 4th, and 5th, counts, of plaintiff's

declaration, and defendant's 2nd, 3rd, additional pleas to the fifth count of plaintiff's declaration, and says that said replication is bad in substance and insufficient in law.

CARTER & McCOLLUM,
S. S. SANDFORD.

Substantial matters of law to be argued and insisted upon as applicable to said replications, severally.

1. Said replication does not avoid the allegations of the plea.

2. Said replication admits the material allegations of said plea and does not set forth any matter in avoidance of the same.

3. Said replication shows that plaintiff has no cause of action against the defendant.

4. Said replication neither confesses and avoids, or traverses and denies the said plea.

5. Said replication presents no issuable matter in avoidance of said plea.

6. Said replication shows jurisdiction in the State Court, and the entry of a valid decree by said Court.

7. Said replication shows that the said proceedings in the State Court *was* for the purpose of impounding a particular fund and that the decree of the State Court was to that effect, and, therefore, a binding and valid decree without personal service on the plaintiff herein.

8. Said replication shows that the plaintiff in this cause by its own act voluntarily submitted itself to the jurisdiction of the State Court.

150 9. Said replication shows that the plaintiff in this cause voluntarily submitted itself to the jurisdiction of the State Court, and sought affirmative relief therefrom, and, therefore, the final decree entered against it was of binding force and effect.

CARTER & McCOLLUM,
S. S. SANDFORD,
Attorneys for Defendant.

I, Ira J. Carter do hereby certify that I believe the foregoing demurrer is well founded in law.

IRA J. CARTER,
Attorneys for Defendant.

STATE OF FLORIDA,
County of Duval:

Before me personally appeared Ira J. Carter who being first duly sworn, deposes and says that he is one of the Attorneys for the Defendant in the above entitled cause and that the foregoing demurrer is not interposed for the purpose of delay.

IRA J. CARTER.

Sworn and subscribed before me this 5th day of July, 1915.
[SEAL.]
J. T. CRAWLEY,
Notary Public.

Indorsement: Motion to strike and demurrer to replications. Filed July 5, 1915.

151 *Motion for Leave to File.*

In the District Court of the United States in and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation, Plaintiff,

v.

THE BANK OF JASPER, of Jasper, Florida, Defendant.

Comes now the Plaintiff in the above entitled cause, by Kay & Doggett, its attorneys, and moves the Court for leave to withdraw from the files of said cause the Replications filed by the Plaintiff herein to the Defendant's Pleas to the first, second, third, fourth, and fifth counts of plaintiff's declaration, and the Plaintiff further moves the Court for leave to file in said cause additional grounds of demurrer to be read in connection with and made a part of the Demurrer hereinbefore filed by the Plaintiff severally to the additional pleas filed by the Defendant herein on August 3, 1914, to the first, second, third, fourth and fifth counts of Plaintiff's Declaration, which said additional grounds of demurrer are hereto attached.

W. E. KAY,
J. L. DOGGETT,
Attorneys for Plaintiff.

In the District Court of the United States in and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation, Plaintiff,

vs.

THE BANK OF JASPER, of Jasper, Florida, Defendant.

152 Comes now the Plaintiff in the above entitled cause, by Kay & Doggett, its attorneys, and leave of the Court having been first had and obtained, files as additional grounds of demurrer, to be read into and made a part of the Demurrer heretofore filed by the Plaintiff severally to the additional Pleas filed by the Defendant herein on August 3rd, 1914, to the first, second, third, fourth, and fifth counts of Plaintiff's Declaration, the following:

10. Said Plea is in direct contravention of Section 5242 of the Revised Statutes of the United States which provides that "no attachment," injunction, or execution, shall be issued against such associa-

tions or *its* property before final judgment in any suit, action, or proceeding, in any State, County or Municipal Court."

11. Said Plea shows affirmatively upon its face that the jurisdiction claimed by the State Court in said Chancery suit was claimed to arise through a seizure of certain funds belonging to the Plaintiff herein.

12. Said Plea shows affirmatively upon its face that the jurisdiction claimed by the State Court in said Chancery suit was claimed through an attachment of certain funds belonging to the Plaintiff herein.

13. Said Plea shows affirmatively upon its face that the jurisdiction claimed by the State Court in the Chancery suit was claimed to arise through a seizure of certain funds belonging to the Plaintiff herein, whereby a trust was later declared impressed upon said funds.

14. Said Plea shows affirmatively upon its face that the jurisdiction claimed by the State Court in said Chancery suit was claimed through an attachment of certain funds belonging to the Plaintiff herein, whereby a trust was later declared impressed upon said funds.

15. Said Plea shows affirmatively upon its face that said State Chancery Court claimed jurisdiction in said Chancery suit
153 solely by reason of certain funds belonging to the Plaintiff herein being in the geographical territory over which said Chancery Court's territorial jurisdiction extended, which said funds said Chancery Court proceeded against in rem, thereby attaching said funds in such a manner as to deprive the Plaintiff herein of their use and benefit from the time of the institution of said Chancery suit, in direct contravention of Section 5242 of the Revised Statutes of the United States.

W. E. KAY,
J. L. DOGGETT,
Attorneys for Plaintiff.

We hereby certify that in our opinion, the above grounds of demurrer are well founded in point of law.

J. L. DOGGETT,
W. E. KAY,
Attorneys for Plaintiff.

STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me a Notary Public for the State of Florida at Large, one H. C. Clark, who being by me first duly sworn deposes and says that he is of counsel for the Plaintiff in the foregoing cause, and that he is duly authorized in its behalf to make this affidavit; and that the above grounds of demurrer are not interposed, or sought to be interposed, by the Plaintiff for the purpose of delay.

HENRY C. CLARK.

Sworn to and subscribed before me this 21 day of Nov. A. D. 1916.

W. L. DEVORE,
Notary Public.

Indorsement: Motion for leave to file additional grounds of Demurrer. Additional Grounds of Demurrer. Filed November 21, 1916.

154 *Petition for Rehearing.*

In the District Court of the United States in and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation, Plaintiff,

vs.

THE BANK OF JASPER, of Jasper, Florida, Defendant.

Comes now the Plaintiff in the above entitled cause, by Kay & Doggett, its Attorneys, and moves the Court to grant unto the Plaintiff a re-hearing of Plaintiff's Demurrer to the additional pleas filed by the Defendant herein on August 3, 1914, to the 1st, 2nd, 3rd, 4th, and 5th, counts of Plaintiff's Declaration; and Plaintiff further moves the Court, upon the granting of such re-hearing, the Court consider as a part of said demurrer to said additional Pleas, and as additional grounds of said Demurrer, the said additional grounds of Demurrer which the Plaintiff has filed after leave of Court was first had and obtained to file the same.

W. E. KAY,
J. L. DOGGETT,
Attorneys for Plaintiff.

Indorsement: Petition for re-hearing. Filed Nov. 21, 1916.

In the United States District Court, Southern District of Florida.

56 E. L., 2.

FIRST NATIONAL BANK OF ROME, GEORGIA,

vs.

THE BANK OF JASPER, Jasper, Florida.

This cause coming on to be heard upon the motion of Plaintiff for leave to withdraw replications and file in said cause additional
155 grounds of demurrer, and the petition for rehearing, and the same having been argued and submitted.

It is considered that said motion and petition be and each of them is hereby denied.

Done this February 2, 1917.

RHYDON M. CALL,
District Judge.

Indorsement: Order denying petition and motion. Filed February 2, 1917.

In the United States District Court, Southern District of Florida.

THE FIRST NATIONAL BANK OF ROME, GEORGIA,

vs.

THE BANK OF JASPER, FLORIDA.

This cause coming on to be heard upon the demurrers to and motions to strike the replications filed by plaintiff to defendant's additional pleas to the first, second, third, fourth, and fifth counts of the declaration, and the same having been argued and submitted,

It is considered that said demurrers be and each of them is hereby sustained.

Done this February 2, 1917.

RHYDON M. CALL,
District Judge.

The questions sought to be raised by these replications are the question passed on by this Court in its ruling on the demurrer to the pleas. I adhere to the ruling then made.

RHYDON M. CALL,
Judge.

Indorsement: Order sustaining demurrer, Filed February 2, 1917.

156 *Stipulation.*

In the United States District Court within and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation under the Laws of the United States and Doing Business at Rome, Georgia, Plaintiff,

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

It is hereby stipulated and agreed by and between the parties in above entitled cause, by and through their respective attorneys of record herein, as follows:

1. That all pleas filed by the defendant herein be withdrawn from the files of this cause save and excepting only the additional pleas filed by the defendant herein on August 3rd, 1914, it being understood and hereby stipulated that the defendant may re-file in said cause said pleas or any of them whenever it may deem it advisable to do so, and that upon the refiling of any or all of said withdrawn pleas, the

record herein as to such re-filed pleas and pleadings subsequent hereto shall stand as it stands with respect to such re-filed pleas at the date of this stipulation.

Signed at Jacksonville, Florida, this 8th day of January, A. D. 1919.

W. E. KAY,
J. L. DOGGETT,
Attorneys for Plaintiff.
O. O. McCOLLUM,
S. S. SANDFORD,
F. P. FLEMING,
Attorneys for Defendant.

Indorsement: Stipulation. Filed Jan. 9, 1919.

157 *Declination to Plead Further.*

In the United States District Court Within and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation under the Laws of the United States and Doing Business at Rome, Georgia, Plaintiff,

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

Comes now the plaintiff in the above entitled cause, by its undersigned attorneys of record herein, and, in view of the stipulation this day entered into by and between the parties herein, the plaintiff does hereby elect to stand upon its demurrer to defendant's pleas filed herein on August 3rd, 1914, and upon its replications to said pleas, to which replications the Court has sustained a demurrer, and the plaintiff does hereby decline to plead further in this cause.

W. E. KAY,
J. L. DOGGET,
Attorneys for Plaintiff.

Indorsement: Declaration to plead further. Filed Jan. 9, 1919.

In the United States District Court within and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation under the Laws of the United States and Doing Business at Rome, Georgia, Plaintiff.

VS.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

Comes now the Defendant in the above entitled cause, and moves the Court for the entry of judgment final herein in favor of
158 the defendant, consequent upon the sustaining of defendant's demurrer to the replication of the plaintiff herein filed June the 15th, 1915, to the additional pleas of the defendant herein filed on the 3rd day of August, 1914.

O. O. McCOLLUM,
S. S. SANDFORD,
T. P. FLEMING,
Attorneys for Defendant.

In the United States District Court within and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation under the Laws of the United States and Doing Business at Rome, Georgia, Plaintiff.

VS.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

This cause came on this day for hearing upon the motion of the defendant for judgment in its favor consequent upon the sustaining of defendant's demurrer to the replication of the plaintiff filed herein in June, 15th, 1915, and it appearing to the Court from the records and files in this cause that the demurrer to said replication was sustained by the Court on the 2nd day of February, 1917, and that the plaintiff has this day filed in said cause its written declination to plead further therein, and has thereby elected to stand upon its demurrer, to defendant's additional pleas filed herein on August 3rd, 1914, which demurrer was over-ruled by the Court, and upon its replication to said pleas, to which replications the Court has sustained demurrer of the defendant.

159 It is thereupon considered by the Court that the said plaintiff, First National Bank of Rome, Georgia, a Corporation under the laws of the United States, take nothing by its said writ and declaration, and that the defendant go hence without day.

It is further considered by the Court that the defendant do have

and recover of and from the plaintiff its costs in this behalf expended, and here taxed at — Dollars, for which execution may issue.

Considered and Ordered at Jacksonville, Florida, this January 9th, 1919.

RHYDON M. CALL,
Judge.

Indorsement: Final judgment. Filed Jan. 9, 1919.

Assignment of Errors.

In the District Court of the United States, Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation under the Laws of the United States and Doing Business at Rome, Georgia, Plaintiff,

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

And now comes the plaintiff in the above styled cause, by its undersigned Attorneys, and assigns as error the following rulings and decisions of the District Court herein, that is to say:

First. The Court erred in overruling plaintiff's demmurrer to defendant's additional plea to the first count of plaintiff's declaration.

160 This assignment of error is based on the ground that said additional plea attempts to set up as a bar to the cause of action set forth in said first count of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Second. The Court erred in overruling plaintiff's demurrer to defendant's additional plea to the second count of plaintiff's declaration.

This assignment of error is based on the ground that said additional plea attempts to set up as a bar to the cause of action set forth in said second count of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Third. The Court erred in overruling plaintiff's demurrer to defendant's additional plea to the third count of plaintiff's declaration.

This assignment of error is based on the ground that said additional plea attempts to set up as a bar to the cause of action set forth in said third count of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive — by publication in an equity suit in personam, in which equity suit the plaintiff
161 herein did not enter a general appearance.

Fourth. The Court erred in overruling plaintiff's demurrer to defendant's additional plea to the fourth count of plaintiff's declaration.

This assignment of error is based on the ground that said additional plea attempts to set up as a bar to cause of action set forth in said fourth count of the declaration, a chancery decree in the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Fifth. The Court erred in overruling plaintiff's demurrer to defendant's additional plea to the fifth count of plaintiff's declaration.

This assignment of error is based on the ground that said additional plea attempts to set up as a bar to the cause of action set forth in said fifth count of the declaration, a chancery decree in the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Sixth. The Court erred in overruling plaintiff's demurrer to the defendant's additional pleas filed August 3rd, 1914, to the first, second, third, fourth and fifth counts of plaintiff's declaration.

This assignment of error is based on the ground that each of said additional pleas attempts to set up as a bar to the causes of
162 action set forth in said first, second, third, fourth and fifth counts of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Seventh. The Court erred in denying plaintiff's motion filed November 21st, 1916, for leave to withdraw replications and file additional grounds of demurrer.

This assignment of error is based on the ground that defendant's additional pleas, and each of them, contravene Section 5242 of the Revised Statutes of the United States and that said pleas are therefore bad.

Eighth. The Court erred in denying plaintiff's petition for rehearing filed November 21st, 1916.

This assignment of error is based on the ground that the many questions of law involved in plaintiff's demurrer to defendant's additional pleas, including additional grounds of demurrer which plaintiff requested leave to file, were of such importance that a rehearing should be granted, particularly since the Court had not, at the first hearing, considered or had before in the additional grounds of demurrer.

Ninth. The Court erred in sustaining defendant's demurrer to plaintiff's replication to defendant's additional plea to the first count of plaintiff's declaration.

This assignment of error is based on the ground that said replication shows and sets forth any and all proceedings in said Chancery suit in the Circuit Court of Hamilton County, Florida, in which the plaintiff herein participated in any manner whatsoever and thereby shows that said additional plea attempts to set up as a bar to the cause of action set forth in said first count of the declara-
163 tion, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Tenth. The Court erred in sustaining defendant's demurrer to plaintiff's replication to defendant's additional plea to the second count of plaintiff's declaration.

This assignment of error is based on the ground that said replication shows and sets forth any and all proceedings in said chancery suit in the Circuit Court of Hamilton County, Florida, in which the plaintiff herein participated in any manner whatsoever, and thereby shows that said additional plea attempts to set up as a bar to the cause of action set forth in said second count of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Eleventh. The Court erred in sustaining defendant's demurrer to plaintiff's replication to defendant's additional plea to the third count of plaintiff's declaration.

This assignment of error is based on the ground that said replication shows and sets forth any and all proceedings in said chancery suit in the Circuit Court of Hamilton County, Florida, in which the plaintiff herein participated in any manner whatsoever, and thereby shows that said additional plea attempts to set up as a bar to the cause of action set forth in said third count of the declaration, a chancery decree of the Circuit Court of Hamilton
164 County, Florida, which decree is null and void as to the plaintiff herein, in that said decree was not obtained through due process of law, and is a decree, in personam founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Twelfth. The Court erred in sustaining defendant's demurrer to plaintiff's replication to defendant's additional plea to the fourth count of plaintiff's declaration.

This assignment of error is based on the ground that said replication shows and sets forth any and all proceedings in said chancery suit in the Circuit Court of Hamilton County, Florida, in which the plaintiff herein participated in any manner whatsoever, and thereby shows that the said additional plea attempts to set up as a bar to the cause of action set forth in said fourth count of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Thirteenth. The Court erred in sustaining defendant's demurrer to plaintiff's replication to defendant's additional plea to the fifth count of plaintiff's declaration.

This assignment of error is based on the ground that said replication shows and sets forth any and all proceedings in said chancery suit in the Circuit Court of Hamilton County, Florida, in which the plaintiff herein participated in any manner whatsoever, and thereby shows that said additional plea attempts to set up as a bar to the cause of action set forth in said fifth count of the declaration, a chancery decree of the Circuit Court of Hamilton County,
165 Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Fourteenth. The Court erred in sustaining the demurrer to the replications filed by plaintiff to defendant's additional pleas to the first, second, third, fourth and fifth counts of the declaration.

This assignment of error is based on the ground that said replications show and set forth any and all proceedings in said chancery suit in the Circuit Court of Hamilton County, Florida, in which the plaintiff herein participated in any manner whatsoever, and thereby show that said additional pleas attempt to set up as a bar to the cause of action set forth in said first, second, third, fourth, and fifth counts of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Fifteenth. The Court erred in entering final judgment on demurrer for defendant.

This assignment of error is based on the ground that — the facts set forth in defendant's additional pleas and in plaintiff's replications thereto, which facts are admitted under the pleadings, it affirmatively appears that said pleas set forth no defense to the cause of action set forth in the first, second, third, fourth and fifth counts of plaintiff's declaration.

166 Wherefore, and for divers other grounds appearing upon the record plaintiff prays that the said several rulings, decisions and judgment may be reversed.

W. E. KAY,
J. L. DOGGETT,
L. A. DEAN,
J. E. DEAN,
HENRY C. CLARK,
Attorneys for Plaintiff.

Indorsement: Assignment of Errors. Filed May 26, 1919.

Writ of error omitted from the printed record, being filed in the original.

* * * * * * *

Bond for Costs.

In the District Court of the United States, Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation under the Laws of the United States and Doing Business at Rome, Georgia, Plaintiff,

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

Know all men by these present that C. S. L'Engle and George R. Desaussure are held and firmly bound unto The Bank of Jasper, a Corporation, defendant in the above styled cause, in the penal sum of Five Hundred ($500.00) Dollars, for the payment whereof, 167 well and truly to be made, we do hereby severally bind ourselves and our heirs, executors, administrators and assigns, firmly by these presents.

Signed and sealed this 27 day of May, A. D. 1919.

The condition of the foregoing obligation is such that, whereas the above named First National Bank of Rome, Georgia, has sued out a writ of error from the judgment of the District Court of the United States in and for the Southern District of Florida, rendered on the 9th day of January, A. D. 1919, in a certain cause therein pending wherein the above named First National Bank of Rome, Georgia, was plaintiff, and the said The Bank of Jasper, was defendant, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable before the said Court on the 25th day of June, A. D. 1919; now if the said First National Bank of Rome, Georgia, shall prosecute the said writ of error to effect and answer all costs and damages, if they shall fail to make their plea good, then this obligation shall become null and void and else shall remain in full force and virtue.

G. R. DE SAUSSURE. [SEAL.]
C. S. L'ENGLE. [SEAL.]

Taken and approved by me, this 26 day of May, A. D. 1919.

RHYDON M. CALL,
Judge.

Indorsement: Bond for Costs. Filed May 26, 1919.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Bank of Jasper, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Circuit Court of Appeals of the United States, to be holden at
168 New Orleans, Louisiana, on the 15th day of June, A. D. 1919, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Southern District of Florida, wherein First National Bank of Rome, Georgia, a corporation, is plaintiff in error, against you, The Bank of Jasper, a corporation, defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned, entered on the 9th day of January, 1919, should not be corrected and speedy justice done to the parties in this behalf.

Witness, the Honorable Rhydon M. Call, Judge of the District Court of the United States for the Southern District of Florida, this 26th day of May, A. D. 1919.

RHYDON M. CALL,
Judge.

Attest:

[SEAL.] EDWIN R. WILLIAMS,
Clerk.

Indorsed on Back.

Received this Citation at Jacksonville, Florida, May 26, 1919, and executed it by handing a true copy hereof to Q. Q. McCollum, Attorney of Record for the within-named, The Bank of Jasper, a corporation, Defendant in Error. Done at Jacksonville, Duval County, Florida, this 26th day of May, 1919.

N. H. BOSWELL,
U. S. Marshal,
By J. D. RICHARDSON,
Deputy U. S. Marshal.

Filed May 28, 1919.

EDWIN R. WILLIAMS,
Clerk.

169 *Affidavit of E. P. Owen, Jr.*

In the United States District Court, Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation, Plaintiff in Error,

vs.

THE BANK OF JASPER, a Corporation, Defendant in Error.

STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary Public within and for the said State and County, one E. P. Owen, Jr., who, being by me first duly sworn, deposes and says that, on the 27th day of May, A. D. 1919, he did personally deliver a copy of the citation in the above styled cause, personally to O. O. McCollum, Esquire, Attorney of Record for the Bank of Jasper, a corporation.

E. P. OWEN, JR.

Sworn to and subscribed before me on this 27th day of May, A. D. 1919.

[SEAL.] ENNIS BOGGS,
Notary Public of Florida.

My commission expires 7th March, 1921.

Filed May 27, 1919.
EDWIN R. WILLIAMS,
Clerk.

170 *Affidavit of R. L. Frink.*

United States District Court Within and for the Southern District of Florida.

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation, Plaintiff in Error,

vs.

THE BANK OF JASPER, a Corporation, Defendant in Error.

STATE OF FLORIDA,
County of Hamilton, ss:

Personally appeared before me, a Notary Public within and for the State of Florida at large, one R. L. Frink, who, being by me first fully sworn, deposes and says that on the 28th day of May, A. D. 1919, he did personally deliver a copy of the citation in the

above styled cause to T. C. Watts, the President of the Bank of Jasper, Florida, a corporation, in the above entitled cause.

R. L. FRINK.

Sworn to and subscribed before me on this 28th day of May, A. D. 1919.

[SEAL.]

F. B. HARRELL.

Filed May 31, 1919.

EDWIN R. WILLIAMS,
Clerk.

171 In the District Court of the United States, Southern District of Florida

FIRST NATIONAL BANK OF ROME, GEORGIA, a Corporation, Plaintiff in Error,

vs.

THE BANK OF JASPER, a Corporation, Defendant in Error.

To the clerk of the above styled court:

In transmitting the record in the above entitled cause to the Clerk of the United States Circuit Court of Appeals, you will please include in such record and the same shall consist of each, severally, of the following:

1. Praecipe for summons filed January 27th, 1913.

2. Summons issued January 27th, 1913, together with the return thereon.

3. Appearance filed March 3rd, 1913.

4. Declaration filed March 3rd, 1913.

5. Stipulation and order of Court filed July 20th, 1914.

6. Additional pleas filed August 3rd, 1914.

7. Demurrer to additional pleas filed September 7th, 1914.

8. Defendant's joinder in demurrer filed September 30th, 1914 (Omit demurrer to additional replications contained in same cover with joinder of issue.)

9. Order of Court dated January 12th, 1915.

10. Motion and Order of Court filed June 15th, 1915.

11. Replications filed June 15th, 1915.

12. Motion to strike and demurrer to replications filed July 5, 1915.

13. Motion for leave to file additional grounds of demurrer, together with such additional grounds of demurrer filed November 21st, 1916.

14. Petition for rehearing filed November 21st, 1916.

15. Order denying *and* petition filed February 2nd, 1917.

16. Order sustain- demurrer filed February 2nd, 1917.

17. Stipulation of Counsel filed January 9th, 1919.

18. Declination to plead further filed January 9th, 1919.

19. Motion for final judgment and final judgment filed January 9, 1919.

20. Assignment of errors filed May 26th, 1919.

21. Writ of Error, dated May 26th, 1919.

22. Bond for costs filed May 26th, 1919.

23. Citation dated May 26th, 1919.

24. Affidavit of E. P. Owen, Jr., as to service of copy of citation and copy of writ of error upon Attorney for Defendant in Error.

25. Affidavit of R. L. Frink as to service of copy of citation and copy of writ of error upon the defendant in error.

26. Directions to the Clerk, with affidavit of service thereof upon O. O. McCollum, Esq., Attorney for Defendant in Error.

27. You will please omit all other papers, pleadings, etc., from the record, for any and all other papers and pleadings are
173 irrelevant and immaterial to the assignments of error.

W. E. KAY,
J. L. DOGGETT,
L. A. DEAN,
J. E. DEAN,
HENRY C. CLARK,
Attorneys for Plaintiff in Error.

To O. O. McCollum, Esquire,
Attorney for Defendant in Error:

You will please take notice of the above and foregoing directions to the Clerk.

W. E. KAY,
J. L. DOGGETT,
L. A. DEAN,
J. E. DEAN,
HENRY C. CLARK,
Attorneys for Plaintiff in Error.

STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary public in and for the State of Florida at large, One E. P. Owen, Jr., who being by me first duly sworn, deposes and says that on the 28th day of May, A. D. 1919, he did personally deliver a copy of the above and foregoing directions to the Clerk in the above styled cause, personally to O. O. McCollum, Esq., Attorney for the Bank of Jasper.

E. P. OWEN, JR.

Sworn to and subscribed before me, this 28th day of May, A. D. 1919.

[SEAL.]

ENNIS BOGGS,
Notary Public, State of Florida, at Large.

My commission expires March 7th, 1921.

Indorsement: Directions to the Clerk. Filed May 28th, 1919.

171 United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA,
Southern District of Florida:

I, Edwin R. Williams, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, do hereby certify, that the foregoing typewritten pages and part pages numbered from 1 to 191 both inclusive, constitute a true and correct copy of the original records and proceedings including the assignment of errors in a cause lately pending in this Court wherein the First National Bank of Rome, Georgia, a corporation, is plaintiff and the Bank of Jasper, a corporation, is defendant, as prepared according to directions filed in said cause.

In witness whereof I have hereunto set my hand and affixed the official seal of said Court at Jacksonville in said District, this 4th day of August 1919.

[SEAL.]

EDWIN R. WILLIAMS,
Clerk United States District Court,
Southern District of Florida,
By W. L. DEVORE,
Deputy Clerk.

175 That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of January 26th, 1920.

No. 3431.

FIRST NATIONAL BANK OF ROME, GEORGIA,

versus

THE BANK OF JASPER.

On this day this cause was called, and, after argument by Henry C. Clark, Esq., and W. E. Kay, Esq., for plaintiff in error, and Hilton S. Hampton, Esq., and F. P. Fleming, Esq., for defendant in error, was submitted to the Court.

176 *Opinion of the Court.*

Filed March 10th, 1920.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3431.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff in Error.

versus

THE BANK OF JASPER, Defendant in Error.

Error to the District Court of the United States for the Southern District of Florida.

W. E. Kay, J. L. Doggett, L. A. Dean, J. E. Dean, and Henry C. Clark for Plaintiff in Error.
Hilton S. Hampton and F. P. Fleming for Defendant in Error.

No. 3432.

STATE BANK OF ROME, Plaintiff in Error,

versus

THE BANK OF JASPER, Defendant in Error.

Error to the District Court of the United States for the Southern District of Florida.

W. E. Kay, J. L. Doggett, L. A. Dean, J. E. Dean and Henry C. Clark for Plaintiff in Error.
Hilton S. Hampton and F. P. Fleming for Defendant in Error.

No. 3433.

STATE BANK OF ROME, GEORGIA, Plaintiff in Error,

versus

FIRST NATIONAL BANK OF JASPER, FLORIDA, Defendant in Error.

Error to the District Court of the United States for the Southern District of Florida.

177 W. E. Kay, J. L. Doggett, L. A. Dean, J. E. Dean, and Henry C. Clark for Plaintiff in Error.
Hilton S. Hampton for Defendant in Error.

Before Walker, Circuit Judge, and Grubb and Jack, District Judges.

By the COURT:

The questions presented in these cases are substantially the same as those ruled on in the case of First National Bank of Rome, Georgia, vs. First National Bank of Jasper, Florida, MS. U. S. Circuit Court of Appeals, Fifth Circuit. Present Term. For reasons stated in the opinion rendered in the just cited case the judgment in each of the above numbered and entitled cases is

Reversed.

(Original filed March 10th, 1920.)

178 *Opinion of the Court.*

Filed March 10th, 1920.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3430.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff in Error,

versus

THE FIRST NATIONAL BANK OF JASPER, FLORIDA, Defendant in Error.

Error to the District Court of the United States for the Southern District of Florida.

W. E. Kay, J. L. Doggett, L. A. Dean, J. E. Dean, and Henry C. Clark for Plaintiff in Error.
Hilton S. Hampton, (S. S. Sandford and Hilton S. Hampton on the brief), for Defendant in Error.

Before Walker, Circuit Judge, and Grubb and Jack, District Judges.

GRUBB, *District Judge:*

This was a suit in the District Court upon a certificate of deposit brought by plaintiff in error as plaintiff against the defendant in error as defendant. Judgment for the defendant was based upon a plea that set up as a bar to the suit a decree of the Circuit Court of Hamilton County, Florida, in which one Corbett was plaintiff, and the parties to the present suit and others were defendants. The sufficiency of the plea as a bar to the present suit depends upon (1) its validity and (2) its effect.

179 (1) First as to its validity as against the plaintiff in this suit. At the time the Florida suit was brought the present plaintiff was a non-resident of Florida, and was served by publication under a statute of Florida, permitting such service. The sufficiency of the constructive service was assailed by a motion of the then defendant to set aside or quash the service, which was overruled by the Circuit Court; from the order overruling the motion an interlocutory appeal was taken to the Supreme Court of Florida, which affirmed the order of the Circuit Court for reasons hereafter stated. It is settled that constructive service can only bring non-residents within the jurisdiction of a court where there is a res in the control of the Court in which the non-resident has an interest, and then only for the sole purpose of adjudicating his rights, if any, to the res. Pennoyer vs. Neff, 95 U. S. 714. This is the extent of the jurisdiction of a court to proceed upon substituted service, in the absence of personal service, or appearance. At the foundation of this limited jurisdiction based upon substituted service is the control of a res by the court asserting it. If there is no such res, the court acquires no jurisdiction for any purpose over the person of a non-resident, upon constructive service. The Circuit Court of Hamilton County, Florida, proceeded to final decree in the case of Corbett vs. First National Bank of Jasper and others upon the theory that there was a res, in which the non-residents were interested, in the control of that Court, and the Supreme Court of Florida on appeal took the same view, and sustained the constructive service upon the non-residents upon that idea. The supposed res was the proceeds of a note which the plaintiff Corbett had discounted at the Jasper Bank, for the purpose of paying for shares of the capital stock of the Rome Ins. Co.,
180 which he claimed to have been induced by fraud to purchase. The proceeds of the note were paid to the trustee for the Insurance Company, and immediately deposited by him in the Jasper Bank, which issued its certificate of deposit therefor to the said trustee. The present suit is brought by the holder of the certificate of deposit. It is upon the theory that the proceeds of the note, so deposited in the Jasper Bank, created a specific fund in that bank, control of which could be and was acquired by the Hamilton County Circuit Court by order of that Court restraining its disposition, and thereby impounding it, that the two Florida Courts acted. The cor-

rectness of the theory is essential to the jurisdiction of the Florida Circuit Court, for if there was no fund there could be no jurisdiction acquired by substituted service. The proceeds of Corbett's note, when discounted, were paid to him by the Jasper Bank; and by him to the trustee for the Insurance Company, which deposited them in the Jasper Bank, taking the bank's obligation therefor in the form of its certificate of deposit. Undoubtedly the transaction was accomplished by bookkeeping entries, no money passing. In any event, the proceeds of Corbett's note never became a special deposit or fund, but were mingled with the Jasper Bank's monies indiscriminately when deposited, and the bank's general obligation substituted for the actual money. The certificate of deposit evidenced no particular fund or money, but the obligation of the bank to repay in like amount as deposited out of any of its assets. There being no res in the control of the Circuit Court of Hamilton County, jurisdiction was not conferred on that court over the non-residents by substituted or constructive service. After the Supreme Court of Florida affirmed the appeal from the interlocutory order of the Circuit Court, sus-
181 taining the service, the non-residents made no further appearance or answer, and the final decree, as to them, was one by default.

It is contended by defendant in error that the effect of appealing from the interlocutory order by the plaintiff in error, (defendant in the Corbett suit), was a general appearance on its part in that case, and conferred jurisdiction over its person on the Circuit Court on the remand of the case. The rule in Florida, differing from that which obtains in the Federal Courts, is to the effect that an appellant, though objecting to the sufficiency of service successfully, is considered in court upon the return of the case to the lower court. Conceding that this court will follow the rule of decision in the State Court, in passing upon a judgment in that court, we think the Florida rule did not apply in the Corbett case. The question of its applicability was suggested but not decided by the Supreme Court of Florida in its opinion in that case because the appellee asked that the appeal be decided on another ground. The Supreme Court held that "if the statute be followed, there is no right in the non-resident to quash this notice (by publication); he has the right if not waived, to object should the Court thereafter commit an error against him." The order of the Circuit Court was for that reason affirmed, apparently leaving the sufficiency and effect of the substituted service to be determined by the character of relief awarded against the non-residents upon final decree. The appeal was from an interlocutory order of the Circuit Court, which affected only the question of service. It was not an appeal from a final decree, upon which the insufficiency of service was assigned with other error, as in the cases cited supporting the Florida rule. The Florida statute allowing appeals from interlocutory orders was held by its Supreme Court in the Cor-
182 bett case to cover an order affecting service only. No other question than the rightful presence of the non-residents in the Circuit Court by virtue of the substituted service was presented by the appeal. If the rule contended for applies to such an interlocutory

appeal, then the Florida legislature and its Supreme Court did a futile thing in providing a method of appealing from an order of the Circuit Court sustaining service, where the taking of the appeal itself by the party complaining of service alone puts the party in court as effectually as if properly served, and renders the appeal ineffectual for any purpose. We are not prepared to extend the rule in Florida as to the effect as an appearance of the taking of an appeal from a final decree, upon which error based on the insufficiency of service was relied upon with others, to an appeal from an interlocutory order, which involved only the question as to whether the appellant was rightfully in court, as in the Corbett case. Conceding that there is no authority in the practice of Florida for special appeals an appeal from any interlocutory order, questioning the sufficiency of service only, is authorized, and from this it is to be implied that an appellent is to derive some benefit from the appeal, which he could not do if the taking of the appeal constituted a general appearance on his part. It is not reasonably supposable that it was intented that the taking as allowed by the statute, of an appeal from such an order as the one in question, should have the effect of depriving the appellant of the sole benefit sought to be obtained, or obtainable, by a resort to the remedy given. In the absence of authority from the Florida Supreme Court, applying the general rule to the case of such an interlocutory appeal, common sense requires us to decline to make the application. This contention is made by defendant in error though there was a stipulation in the State Court cas
183 that the supersedeas should not constitute a general appearance.

(2) Aside from the question of jurisdiction acquired by service or appearance or both, and the validity of the decree as dependent thereon, is the question of the legal effect of the final decree rendered in the Corbett case.

We think that the decision of this case may be made to depend upon the effect to be given the decree of the Florida Circuit Court as a defence to this suit. It is set up as a defence to a suit by the plaintiff in error to enforce a personal liability against the defendant in error upon a certificate of deposit. If the Florida decree was rendered with jurisdiction over the person of the plaintiff in error, and if its effect was to adjudicate that the defendant in error was not liable to plaintiff in error in a personal action upon the certificate of deposit, it would present a complete defence to the present suit. If either proposition fails to establishment, it presents no defence. We do not think that the Florida decree adjudicated the non-liability of the defendant in error to a personal judgment in favor of a holder of the certificate of deposit. The Supreme Court of Florida in the opinion in the case of Rome Insurance Company vs. Corbett, (based on this same transaction), said of the bill in that case:

"The Bill confines its prayer to an adjudication of the fund sought to be impounded, and does not pray for a general personal decree against these non-residents, and we are not to assume upon the face

of the Bill that the Circuit Court will enter an unauthorized decree, and we have not before us any such question of jurisdiction as was involved in the case of Pennoyer vs. Neff, 95 U. S. 714. * * * We are not to be understood as holding that the Court might not quash a service by publication, if the Bill upon its face showed that it was clearly a common law action, and that the resort to the equity side of the court was a mere subterfuge."

The Supreme Court of Florida construed the bill as asking relief only out of a fund supposed to be in the Jasper Bank, and held that that was the only character of relief that was grantable as against
184 the non-resident defendants upon constructive service. The Court said that it contained no prayer for a general personal decree, and that such a decree would be unauthorized and in conflict with the doctrine of Pennoyer vs. Neff. This was a direction to the lower court to restrict whatever decree it might render against non-residents upon constructive service to an adjudication of their rights in the fund, which was supposed to be in the possession of the defendant in error, the Jasper Bank. The Supreme Court reserved "his right, if not waived, to object should the Court thereafter commit an error against him." The fact that there was no such fund in existence, and that only the personal liability of the defendant in error on the certificate of deposit was in question, is immaterial. The Circuit Court of Hamilton County and the Supreme Court of Florida both entertained the view that the proceeds of the notes discounted, when deposited in the Jasper Bank to the credit of the Trustee of the Rome Insurance Company created a fund, which was evidenced by the certificate of deposit, and which conferred jurisdiction on the Circuit Court over the non-residents, but only to the extent of their interest in the supposed fund. It will be presumed that the subsequent final decree of the Hamilton County Circuit Court was restricted as directed by the Supreme Court. A reference to its terms makes this certain. It adjudged the agreement between Corbett and the Rome Insurance Company and its Trustee for the sale of its capital stock void and of no effect; that the proceeds of the note of Corbett, covered by the certificate of deposit be impressed with a trust in favor of Corbett and be decreed to belong to him; that the Trustee for the Rome Insurance Company be adjudged to have no interest in the proceeds of the note and that defendant in error be required to pay such proceeds to Cor-
185 bett and enjoined from paying them to the Trustee or any one for it; that the certificate of deposit in so far as it covers and includes the proceeds derived from the said note be decreed void and of no effect. It is clear that the decree adjudged only the rights of the non-residents in and to the supposed fund in the Jasper Bank and did not attempt to adjudge that the Jasper Bank was not personally liable to the non-resident holders of the certificates of deposit. Under the doctrine of Pennoyer vs. Neff, recognized and referred to in the opinion of the Supreme Court of Florida, it could not have done so. The decree went as far as it could go, in deny-

ing the non-residents the right to participate in the supposed, but actually non-existent, fund in the Jasper Bank.

The defendant in error set up the decree as a defense to a common law action brought by a non-resident holder of the certificate of deposit against the Jasper Bank, seeking to subject it to a judgment upon the theory of its personal liability by reason of its having executed the certificate of deposit which was in legal effect a due bill and imported the personal liability of the maker, as much as would a promissory note. A decree which had the sole effect of adjudging that the plaintiff had no rights in a special fund, whether existent or not, could not bar the right of the plaintiff to try out in the common law action the personal liability of the bank that issued the certificate. If the Jasper Bank was personally liable to the holder of the certificate, the holder was entitled to pursue it to judgment and collect the judgment out of its assets, other than the fund. The decree was therefore no defence to the action, and this would result even though the Hamilton County Circuit Court had obtained jurisdiction, by service or appearance, to render a personal decree
186 against the non-resident, since the decree actually rendered and here interposed as a defence, is not such a decree.

We think the decree presented no defence to the action (1) because the Florida Court had no jurisdiction to render it as to the non-residents, and (2) because it did not purport to determine the personal liability of the defendant in error to the plaintiff in error on the certificate of deposit. The decree is reversed and the cause remanded for further proceedings in conformity to this opinion.

Reversed.

JACK, *District Judge:*

On the ground that the Circuit Court of Hamilton County, Florida, was without jurisdiction in the Corbett case, I concur in the decree.

(Original filed March 10th, 1920.)

187 *Judgment.*

Extract from the Minutes of March 10th, 1920.

No. 3431.

FIRST NATIONAL BANK OF ROME, GEORGIA,

versus

THE BANK OF JASPER.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by

this Court, that the judgment of the said District Court in this cause, be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court, for further proceedings in conformity to the opinion of this Court;

It is further ordered and adjudged that the defendant in error, The Bank of Jasper, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

188 *Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 175 to 187 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3431, wherein the First National Bank of Rome, Georgia, is plaintiff in error, and The Bank of Jasper is defendant in error, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 174 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of April, A. D. 1920.

[Seal of the United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

189 In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3431.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff in Error.

versus

THE BANK OF JASPER, Defendant in Error.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the transcript of the record of the proceedings of this Court in the within entitled

case heretofore certified by me for filing in the Supreme Court of the United States was correct and complete as the same then appeared in this Court.

In pursuance of the command of the annexed writ of certiorari, I hereby certify that on the 26th day of October, A. D. 1920, there was filed in my office a stipulation in the above entitled case, in the following words, to-wit:

"In the United States Circuit Court of Appeals in and for the Fifth Circuit.

#3431.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff in Error,

v.

THE BANK OF JASPER, Defendant in Error.

Stipulation.

Whereas: the United States Supreme Court, by a writ of certiorari issued on the 15th day of October, A. D. 1920, commanded the Judges of the above Court to send to said United States Supreme Court without delay, the record and proceedings in the above entitled cause, and

Whereas: there is now on file and of record in said United States Supreme Court a certified transcript of the record and proceedings in the above entitled cause,

190 Now therefore, it is stipulated and agreed by and between counsel for the respective parties hereto that the said certified copy of the transcript and proceedings of the above cause now on file and of record in the United States Supreme Court may be taken and considered by said United States Supreme Court as a sufficient compliance with and return to said writ.

Dated this 20" day of October, A. D. 1920.

(Signed) W. E. KAY,
J. L. DOGGETT,
HENRY C. CLARK,
Attorneys and of Counsel for The State Bank of Rome, Plaintiff in Error.

(Signed) F. P. FLEMING,
Attorney and of Counsel for The Bank of Jasper, Defendant in Error."

I further certify that the above is a true and correct copy of said stipulation and of the whole thereof.

In testimony whereof, I hereunto subscribe my name and affix the

seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 26th day of October, A. D. 1920.

[Seal of the United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

191 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which First National Bank of Rome, Georgia, is plaintiff in error, and The Bank of Jasper is defendant in error, No. 3431, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Southern District of Florida, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into
192 the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the fifteenth day of October, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

193 [Endorsed:] File No. 27740. Supreme Court of the United States, October Term, 1920. No. 383. The Bank of Jasper vs. The First National Bank of Rome, Georgia. Writ of certiorari. 3431. Filed 26 day of October, 1920. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

194 [Endorsed:] 383/27740. No. 3431. United States Circuit Court of Appeals for the Fifth Circuit. First National Bank of Rome, Georgia, plaintiff in error, vs. The Bank of Jasper, defendant in error. Writ of certiorari and return thereto.

195 [Endorsed:] File No. 27740. Supreme Court U. S., October Term, 1920. Term No. 383. The Bank of Jasper, petitioner, vs. First National Bank of Rome, Ga. Writ of certiorari and return. Filed Oct. 29, 1920.